

AMENDED IN ASSEMBLY AUGUST 7, 2006

AMENDED IN ASSEMBLY JUNE 26, 2006

AMENDED IN ASSEMBLY JUNE 20, 2006

AMENDED IN SENATE MAY 9, 2006

AMENDED IN SENATE APRIL 20, 2006

AMENDED IN SENATE APRIL 17, 2006

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**SENATE BILL**

**No. 1759**

**Introduced by Senator Ashburn**

February 24, 2006

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An act to amend Sections 1265.5, 1338.5, 1416.26, 1522, 1526.5, 1568.07, 1568.09, 1569.17, 1569.24, 1575.7, 1596.871, 1728.1, 1736.6, 1743.9, 106700, and 116735 of, to add Sections 1522.08, ~~1798.212~~, 106722, and 106877 to, and to add Chapter 2.6 (commencing with Section 1499) to Division 2 of, the Health and Safety Code, and to amend Sections 5405 and 9719 of the Welfare and Institutions Code, relating to health and care.

LEGISLATIVE COUNSEL'S DIGEST

SB 1759, as amended, Ashburn. Health: background checks: fees: inspections.

Under existing law, the State Department of Health Services licenses and regulates health facilities, including intermediate care facilities. A violation of these provisions is a crime.

Existing law requires the department to secure a criminal record from an appropriate law enforcement agency prior to the initial licensure or renewal of a license of any person or persons to operate or

manage an intermediate care facility/developmentally disabled-habilitative, intermediate care facility/developmentally disabled nursing, or intermediate care facility/developmentally disabled, other than an intermediate care facility/developmentally disabled operated by the state, to determine whether the applicant, facility administrator or manager, any direct care staff, or any other adult living in the same location has ever been convicted of a crime other than a minor traffic violation.

This bill would, instead, require the department to request the Department of Justice to search for criminal record offender information. It would require that the criminal record clearance be conducted by the submission of fingerprint images and related information to the Department of Justice, would specify that the criminal record shall be complete when the State Department of Health Services has obtained the criminal offender record information search response, and would prohibit direct contact by the applicant with residents until completion of the clearance, in accordance with specified procedures. *This bill would further provide that if the State Department of Health Services fails to meet certain criteria relating to the criminal record clearance for a period of 90 days certain provisions shall be suspended until the department can demonstrate that it has met those criteria for a period of 90 days.* By imposing additional licensure requirements on these facilities the bill would change the definition of an existing crime, thus creating a state-mandated local program.

Existing law requires that a criminal record clearance shall be conducted for all nurse assistants by the submission of fingerprint cards to the department for processing at the Department of Justice, and requires completion of the record clearance prior to issuance or renewal of a certificate.

This bill would, instead, require the criminal record clearance be conducted by the submission of fingerprint images and related information to the Department of Justice, would specify that the criminal record shall be complete when the State Department of Health Services has obtained the criminal offender record information search response, and would prohibit direct contact by the applicant with residents until completion of the clearance, in accordance with specified procedures. *This bill would further provide that if the State Department of Health Services fails to meet certain criteria relating to the criminal record clearance for a period of 90 days, certain*

*provisions shall be suspended until the department can demonstrate that it has met those criteria for a period of 90 days.*

This bill would impose an additional requirement for licensing or certification under specified health care provider licensing programs administered by the State Department of Health Services by requiring that any person or entity licensed under one of the applicable programs disclose any revocation or other final administrative action taken against a license, certificate, registration, or other permission to engage in a profession, vocation, or occupation to operate a facility or institution.

Existing law establishes requirements, administered by the State Department of Health Services, for applicants for a nursing home facility administrator license, including the requirement that the applicant shall, as part of the application process, submit to the department 2 sets of completed fingerprint cards for a criminal record clearance through the Department of Justice.

This bill would, instead, require the applicant to electronically submit fingerprint images and related information to the Department of Justice for a criminal offender record information search, would specify that the clearance would not be complete until the offender record information search response is obtained by the department, and would prohibit the applicant from direct contact with patients until completion of the clearance, in accordance with specified procedures.

Existing law, the California Adult Day Health Care Act, requires that the State Department of Health Services, prior to issuing a new license under that act, conduct certain procedures in securing a criminal record clearance with respect to the administrator, program director, and fiscal officer of a proposed adult day health care center. Any violation of the provisions of that act is a crime.

This bill would revise those procedures by, among other things, prohibiting a person from direct contact with residents until completion of the criminal record clearance, in accordance with specified procedures. By revising those procedures this bill would revise the definition of a crime, resulting in a state-mandated local program.

Existing law, administered by the State Department of Health Services, regulates licensing of home health agencies and private duty nursing agencies and certification of certified home health aides. Existing law requires certain persons, as part of the home health agency licensure process, as well as applicants for home health aid

certification, to submit to the department fingerprints for the furnishing of the person's criminal record clearance.

This bill would revise the fingerprint requirements to use the submission of electronic fingerprint images and related information to the Department of Justice.

*This bill would, as to home health aides, require that the criminal record clearance be conducted by the submission of fingerprint images and related information to the Department of Justice, would specify that the criminal record shall be complete when the State Department of Health Services has obtained the criminal offender record information search response, and would prohibit direct contact by the applicant with residents until completion of the clearance, in accordance with specified procedures. This bill would further require that if the State Department of Health Services fails to meet certain criteria relating to the criminal record clearance for a period of 90 days, certain provisions shall be suspended until the department can demonstrate that it has met those criteria for a period of 90 days.*

This bill would require the State Department of Health Services to explore options to work with private and governmental agencies to ensure that facility licensees have adequate access to electronic transmission services, as provided.

Under existing law, the State Department of Social Services licenses and regulates various community care facilities, residential care facilities for the elderly and for persons with a chronic, life-threatening illness, and child day care facilities. Existing law requires the department to inspect certain of these facilities within 90 days of initial licensure, to evaluate compliance with applicable rules and regulations, and to assess the facility's continuing ability to meet regulatory requirements.

Under existing law, licensees and other individuals who are present and provide care in these facilities are required to provide fingerprints and the department is required to secure the individual's criminal history, to determine whether he or she has been convicted of a crime other than a minor traffic violation, or convicted of specified sex-related offenses. Under existing law, violation of the provisions governing these facilities is a misdemeanor.

This bill would require an individual to obtain either a criminal record clearance from the Department of Justice or a criminal record exemption from the State Department of Social Services before his or her initial presence in any one of the above categories of facilities. It

would require a person who is required to be fingerprinted to submit fingerprint images and related information to the Department of Justice for a criminal offender record information search.

By changing the definition of an existing crime, this bill would impose a state-mandated local program.

Existing law requires the Department of Justice to coordinate with the State Department of Social Services to establish and implement an automated live-scan processing system for fingerprints in specified offices of the department by July 1, 1999.

This bill would delete that requirement.

The bill would authorize the California Department of Aging, State Department of Health Services, State Department of Alcohol and Drug Programs, State Department of Mental Health, State Department of Social Services, and the Emergency Medical Services Authority to share information with respect to applicants, licensees, certificates, or individuals who have been the subject of any administrative action resulting in the denial, suspension, probation, or revocation of a license, permit, or certificate, or in the exclusion of any person from a facility who is subject to a background check. It would require the State Department of Social Services to maintain a centralized system for the monitoring and tracking of final administrative actions, to be used by those state entities as a part of the background check process. *To the extent that additional funds are needed for this purpose, this bill would require the implementation of these provisions to be contingent upon a specific appropriation provided for this purpose in the annual Budget Act.*

Existing law requires that, within 90 days after the date of issuance of a license or special permit to operate a community care facility or a residential care facility for the elderly or for persons with chronic life-threatening illnesses, the department inspect the facility.

This bill would require, instead, that this inspection occur within 90 days after a facility accepts its first client for placement following the issuance of a license.

~~Existing law provides for the licensure and regulation of emergency medical services (EMS) personnel, including the issuance of EMT-P licenses, by local EMS agencies, with oversight by the Emergency Medical Services Authority.~~

~~The bill would require each applicant for an initial EMT-P license, or for renewal of an EMT-P license, to disclose specified information~~

~~relating to criminal convictions and investigations, and certain disciplinary actions.~~

Existing law provides for the certification of registered environmental health specialists by the State Department of Health Services. Existing law establishes application, examination, and renewal fees for this certification.

This bill would increase those fee amounts, as specified.

Existing law permits the department, upon recommendation of the Environmental Health Specialist Registration Committee, to suspend, deny, refuse to renew, or revoke the certification of a registered environmental health specialist upon prescribed grounds.

This bill would, in addition, permit the department to deny, amend, revoke, suspend, or restrict that registration a person's background or behavior bears materially or that person's ability to safely perform activities under the registration.

Existing law requires the department to examine and certify persons as to their qualifications to supervise or operate water treatment plants and water distribution systems. Existing law allows the department to suspend, revoke, or refuse to grant or renew such a certificate on specified grounds.

This bill would allow the department, in addition, to deny, amend, revoke, suspend, or restrict such a certification when, in the judgment of the department, a person's background or behavior bears materially on that person's ability to safely perform activities under the certification.

Existing law provides for the regulation of public water systems by the department. Existing law requires the department to inspect each public water system at least annually.

This bill would require the department, instead, to inspect each public water system either annually, biennially, or every 3 years, depending on the nature of the water source. It would allow the department to inspect public water systems on a more frequent basis.

Existing law establishes within the California Department of Aging, the Office of the State Long-Term Care Ombudsman to promote the development, coordination, and utilization of resources to meet the long-term care needs of older individuals. Existing law requires the office to sponsor a meeting of representatives of approved organizations at least twice each year, and provide training to these representatives as appropriate.

This bill would require that, beginning July 1, 2007, prior to acceptance by the office as designated ombudsmen, the State Department of Social Services conduct a criminal record clearance and that the criminal record clearance be completed as prescribed. The bill would require the office to contract with the State Department of Social Services to conduct the criminal background check.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1265.5 of the Health and Safety Code is  
2     amended to read:  
3     1265.5. ~~(a) (1) Prior~~ *The Legislature hereby finds and*  
4     *declares that 90 percent of all criminal record reports requested*  
5     *through to the Department of Justice's Licensing and*  
6     *Certification Program are now cleared and processed within*  
7     *three business days after they are received by the department,*  
8     *and the remaining 10 percent require individual processing,*  
9     *investigation, and determination.*  
10    (a) (1) *Prior* to the initial licensure or renewal of a license of  
11    any person or persons to operate or manage an intermediate care  
12    facility/developmentally disabled habilitative, an intermediate  
13    care facility/developmentally disabled nursing, or an intermediate  
14    care facility/developmentally disabled, other than an intermediate  
15    care facility/developmentally disabled operated by the state that  
16    secures criminal record clearances for its employees through a  
17    method other than as specified in this section or upon the hiring  
18    of direct care staff by any of these facilities, the department shall  
19    request the Department of Justice to search for criminal offender  
20    record information to determine whether the applicant, facility  
21    administrator or manager, any direct care staff, or any other adult  
22    living in the same location, has ever been convicted of a crime  
23    other than a minor traffic violation.

(2) The criminal record clearance shall require the applicant to submit electronic fingerprint images and related information of the facility administrator or manager, and any direct care staff, or any other adult living in the same location, to the Department of Justice. Applicants shall be responsible for any cost associated with capturing or transmitting the fingerprint images and related information. The department shall explore options to work with private entities, government agencies, and law enforcement agencies to ensure that licensees have adequate access to electronic transmission sites, including requiring the department to maintain a contract for electronic transmission services in each of the district offices where facilities have indicated problems with timely access to electronic transmission sites or consistent delays of more than three business days in obtaining appointments for electronic transmission services through a private entity, government agency, or law enforcement agency.

~~(3) When the Licensing and Certification Program receives 95 percent of its total responses indicating no evidence of recorded criminal information from the Department of Justice within three business days, it shall issue an All Facilities Letter (AFL) informing facility licensees. After the AFL is issued, licensees~~(A) *The Licensing and Certification Program shall issue an All Facilities Letter (AFL) to facility licensees when both of the following criteria are met:*

*(i) The program receives, within three business days, 95 percent of its total responses indicating no evidence of recorded criminal information from the Department of Justice.*

*(ii) The program processes 95 percent of its total responses requiring disqualification in accordance with subdivision (c), no later than 45 days after the date that the report is received from the Department of Justice.*

*(B) After the AFL is issued, licensees shall not allow newly hired facility administrators, managers, direct care staff, or any other adult living in the same location to have direct contact with clients or residents of the facility prior to completion of the criminal record clearance. A criminal record clearance shall be complete when the department has obtained the person's criminal offender record information search response from the Department of Justice and has determined that the person is not disqualified from engaging in the activity for which clearance is*



required. Notwithstanding any other provision of law, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this paragraph by means of an AFL or similar instruction.

(4) An applicant and any other person specified in this subdivision, as part of the background clearance process, shall provide information as to whether or not the person has any prior criminal convictions, has had any arrests within the past 12-month period, or has any active arrests, and shall certify that, to the best of his or her knowledge, the information provided is true. This requirement is not intended to duplicate existing requirements for individuals who are required to submit fingerprint images as part of a criminal background clearance process. Every applicant shall provide information on any prior ~~disciplinary~~ *administrative* action taken against him or her by any federal, state, or local governmental agency and shall certify that, to the best of his or her knowledge, the information provided is true. An applicant or other person required to provide information pursuant to this section that knowingly or willfully makes false statements, representations, or omissions may be subject to administrative action, including, but not limited to, denial of his or her application or exemption or revocation of any exemption previously granted.

(b) (1) The application for licensure or renewal shall be denied if the criminal record indicates that the person seeking initial licensure or renewal of a license referred to in subdivision (a) has been convicted of a violation or attempted violation of any one or more of the following Penal Code provisions: Section 187, subdivision (a) of Section 192, Section 203, 205, 206, 207, 209, 210, 210.5, 211, 220, 222, 243.4, 245, 261, 262, or 264.1, Sections 265 to 267, inclusive, Section 273a, 273d, 273.5, or 285, subdivisions (c), (d), (f), and (g) of Section 286, Section 288, subdivisions (c), (d), (f), and (g) of Section 288a, Section 288.5, 289, 289.5, 368, 451, 459, 470, 475, 484, or 484b, Sections 484d to 484j, inclusive, or Section 487, 488, 496, 503, 518, or 666, unless any of the following applies:

(A) The person was convicted of a felony and has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with

1 Section 4852.01) of Title 6 of Part 3 of the Penal Code and the  
2 information or accusation against the person has been dismissed  
3 pursuant to Section 1203.4 of the Penal Code with regard to that  
4 felony.

5 (B) The person was convicted of a misdemeanor and the  
6 information or accusation against the person has been dismissed  
7 pursuant to Section 1203.4 or 1203.4a of the Penal Code.

8 (C) The person was convicted of a felony or a misdemeanor,  
9 but has previously disclosed the fact of each conviction to the  
10 department and the department has made a determination in  
11 accordance with law that the conviction does not disqualify the  
12 person.

13 (2) The application for licensure or renewal shall be denied if  
14 the criminal record of the person includes a conviction in another  
15 state for an offense that, if committed or attempted in this state,  
16 would have been punishable as one or more of the offenses set  
17 forth in paragraph (1), unless evidence of rehabilitation  
18 comparable to the dismissal of a misdemeanor or a certificate of  
19 rehabilitation as set forth in subparagraph (A) or (B) of paragraph  
20 (1) is provided to the department.

21 (c) If the criminal record of a person described in subdivision  
22 (a) indicates any conviction other than a minor traffic violation or  
23 other than a conviction listed in subdivision (b), the department  
24 may deny the application for licensure or renewal. In determining  
25 whether or not to deny the application for licensure or renewal  
26 pursuant to this subdivision, the department shall take into  
27 consideration the following factors as evidence of good character  
28 and rehabilitation:

29 (1) The nature and seriousness of the offense under  
30 consideration and its relationship to their employment duties and  
31 responsibilities.

32 (2) Activities since conviction, including employment or  
33 participation in therapy or education, that would indicate changed  
34 behavior.

35 (3) The time that has elapsed since the commission of the  
36 conduct or offense referred to in paragraph (1) or (2) and the  
37 number of offenses.

38 (4) The extent to which the person has complied with any  
39 terms of parole, probation, restitution, or any other sanction  
40 lawfully imposed against the person.

1 (5) Any rehabilitation evidence, including character  
2 references, submitted by the person.

3 (6) Employment history and current employer  
4 recommendations.

5 (7) Circumstances surrounding the commission of the offense  
6 that would demonstrate the unlikelihood of repetition.

7 (8) The granting by the Governor of a full and unconditional  
8 pardon.

9 (9) A certificate of rehabilitation from a superior court.

10 (d) Nothing in this section shall be construed to require a  
11 criminal record check of a person receiving services in an  
12 intermediate care facility/developmentally disabled habilitative,  
13 intermediate care facility/developmentally disabled-nursing, or  
14 intermediate care facility/developmentally disabled.

15 (e) For purposes of this section, “direct care staff” means all  
16 facility staff who are trained and experienced in the care of  
17 persons with developmental disabilities and who directly provide  
18 program and nursing services to clients. Administrative and  
19 licensed personnel shall be considered direct care staff when  
20 directly providing program and nursing services to clients.  
21 Persons employed as consultants and acting as direct care staff  
22 shall be subject to the same requirements for a criminal record  
23 clearance as other direct care staff. However, the employing  
24 facility shall not be required to pay any costs associated with that  
25 criminal record clearance.

26 (f) Upon the employment of any person specified in  
27 subdivision (a), and prior to any contact with clients or residents,  
28 the facility shall ensure that electronic fingerprint images and  
29 related information are submitted to the Department of Justice for  
30 the purpose of obtaining a criminal record check.

31 (g) The department shall develop procedures to ensure that  
32 any licensee, direct care staff, or certificate holder for whom a  
33 criminal record has been obtained pursuant to this section or  
34 Section 1338.5 or 1736 shall not be required to obtain multiple  
35 criminal record clearances.

36 (h) *If, at any time, the department does not meet the standards*  
37 *specified in clauses (i) and (ii) of subparagraph (A) of paragraph*  
38 *(3) of subdivision (a), for a period of 90 days, the requirements*  
39 *in paragraph (3) of subdivision (a) shall be suspended until the*

1 *department can demonstrate that it has met those standards for a*  
2 *period of 90 days.*

3 SEC. 2. Section 1338.5 of the Health and Safety Code is  
4 amended to read:

5 1338.5. ~~(a) (1) A~~ *The Legislature hereby finds and declares*  
6 *that 90 percent of all criminal record reports requested through*  
7 *the Department of Justice's Licensing and Certification Program*  
8 *are now cleared and processed within three business days after*  
9 *they are received by the department, and the remaining 10*  
10 *percent require individual processing, investigation, and*  
11 *determination.*

12 (a) (1) (A) A criminal record clearance shall be conducted  
13 for all nurse assistants by the submission of fingerprint images  
14 and related information to the Department of Justice. ~~When the~~  
15 ~~Licensing and Certification Program receives 95 percent of its~~  
16 ~~total responses indicating no evidence of recorded criminal~~  
17 ~~information from the Department of Justice within three business~~  
18 ~~days, it shall issue an All Facilities Letter (AFL) informing~~  
19 ~~facility licensees. After the AFL is issued, licensees~~ *The*  
20 *Licensing and Certification Program shall issue an All Facilities*  
21 *Letter (AFL) to facility licensees when both of the following*  
22 *criteria are met:*

23 (i) *The program receives, within three business days, 95*  
24 *percent of its total responses indicating no evidence of recorded*  
25 *criminal information from the Department of Justice.*

26 (ii) *The program processes 95 percent of its total responses*  
27 *requiring disqualification in accordance with paragraph (2) of*  
28 *subdivision (3) of Section 1337.9, no later than 45 days after the*  
29 *date that the report is received from the Department of Justice.*

30 (B) *After the AFL is issued, licensees* shall not allow nurse  
31 assistant trainees or newly hired nurse assistants to have direct  
32 contact with clients or residents of the facility prior to completion  
33 of the criminal record clearance. A criminal record clearance  
34 shall be complete when the department has obtained the person's  
35 criminal offender record information search response information  
36 from the Department of Justice and has determined that the  
37 person is not disqualified from engaging in the activity for which  
38 clearance is required. Notwithstanding any other provision of  
39 law, the department may, without taking regulatory action  
40 pursuant to Chapter 3.5 (commencing with Section 11340) of

1 Part 1 of Division 3 of Title 2 of the Government Code,  
2 implement, interpret, or make specific this paragraph by means  
3 of an AFL or similar instruction. Applicants shall be responsible  
4 for any costs associated with capturing or transmitting the  
5 fingerprint images and related information. The fee to cover the  
6 processing costs of the Department of Justice, not including the  
7 costs associated with capturing or transmitting the fingerprint  
8 images and related information, shall not exceed thirty-two  
9 dollars (\$32) per submission.

10 (2) (A) Upon enrollment in a training program for nurse  
11 assistant certification, and prior to direct contact with residents, a  
12 candidate for training shall submit a training and examination  
13 application to the department and submit electronic fingerprint  
14 images and related information to receive a criminal record  
15 review through the Department of Justice. Submission of the  
16 fingerprint images and related information to the Department of  
17 Justice for transmission to the Federal Bureau of Investigation  
18 shall be at the discretion of the department. The criminal record  
19 shall be completed prior to direct contact with residents by the  
20 nurse assistant applicant.

21 (B) New nurse assistant applicants who are unemployed and  
22 unable to pay the fee charged by the Department of Justice  
23 pursuant to paragraph (1) of subdivision (a) due to financial  
24 hardship may request a waiver for a period not to exceed six  
25 months. The request for waiver shall be made in writing at the  
26 time the fingerprint card is submitted for processing. The  
27 applicant shall agree to pay the fee within six months of  
28 employment. The failure to pay the fee within the six-month  
29 period shall result in the inactivation of the applicant's certificate  
30 until the fee is paid in full.

31 (C) An applicant and any other person specified in this  
32 subdivision, as part of the background clearance process, shall  
33 provide information as to whether or not the person has any prior  
34 criminal convictions, has had any arrests within the past  
35 12-month period, or has any active arrests, and shall certify that,  
36 to the best of his or her knowledge, the information provided is  
37 true. This requirement is not intended to duplicate existing  
38 requirements for individuals who are required to submit  
39 fingerprint images as part of a criminal background clearance  
40 process. Every applicant shall provide information on any prior

1 ~~disciplinary~~ *administrative* action taken against him or her by any  
2 federal, state, or local government agency and shall certify that,  
3 to the best of his or her knowledge, the information provided is  
4 true. An applicant or other person required to provide  
5 information pursuant to this section that knowingly or willfully  
6 makes false statements, representations, or omissions may be  
7 subject to administrative action, including, but not limited to,  
8 denial of his or her application or exemption or revocation of any  
9 exemption previously granted.

10 (b) Upon receipt of the fingerprint images and related  
11 information, the Department of Justice shall notify the  
12 department with the applicant's criminal offender record  
13 information search response, as provided for in this subdivision.  
14 If no criminal record information has been recorded, the  
15 Department of Justice shall provide the department with a  
16 statement of that fact. If the fingerprint images are illegible, the  
17 Department of Justice shall, within 15 calendar days from receipt  
18 of the fingerprint images, notify the department of that fact.

19 (c) The department shall respond to the applicant and  
20 employer within 30 days from the date of receipt of the response  
21 described in subdivision (b).

22 (d) The department shall receive the response described in  
23 subdivision (b) prior to certifying a nurse assistant and prior to  
24 allowing direct contact with residents by the nurse assistant  
25 applicant.

26 (e) The use of fingerprint live-scan technology implemented  
27 by the Department of Justice by the year 1999 shall be used by  
28 the Department of Justice to generate timely and accurate  
29 positive fingerprint identification prior to nurse assistant  
30 certification and prior to direct contact with residents by the  
31 nurse assistant applicant. The department shall explore options to  
32 work with private and governmental agencies to ensure that  
33 licensees have adequate access to electronic transmission sites,  
34 including requiring the department to maintain a contract for  
35 electronic transmission services in each of the district offices  
36 where facilities have indicated problems with timely access to  
37 electronic transmission sites or consistent delays of more than  
38 three business days in obtaining appointments for electronic  
39 transmission services through a private entity, government  
40 agency, or law enforcement agency.

1 (f) The state department shall develop procedures to ensure  
2 that any licensee, direct care staff, or certificate holder for whom  
3 a criminal record has been obtained pursuant to this section or  
4 Section 1265.5 or 1736 shall not be required to obtain multiple  
5 criminal record clearances.

6 (g) If the department is experiencing a delay in processing the  
7 renewal of the certified nursing assistant's certification at the  
8 time of the expiration of the certified nursing assistant's  
9 certification, the department may extend the expiration of the  
10 certified nursing assistant's certification for six months.

11 (h) *If, at any time, the department does not meet the standards*  
12 *specified in clauses (i) and (ii) of subparagraph (A) of paragraph*  
13 *(1) of subdivision (a), for a period of 90 days, the requirements*  
14 *in paragraph (1) of subdivision (a) shall be suspended until the*  
15 *department can demonstrate it has met those standards for a*  
16 *period of 90 days.*

17 SEC. 3. Section 1416.26 of the Health and Safety Code is  
18 amended to read:

19 1416.26. (a) As part of the application process for a nursing  
20 home administrator license, an applicant shall electronically  
21 submit fingerprint images and related information, for a criminal  
22 offender record information search, to the Department of Justice  
23 and the Federal Bureau of Investigation, through the Department  
24 of Justice. The applicant shall provide proof of electronic  
25 transmission of his or her fingerprint images and related  
26 information to the Department of Justice and the Federal Bureau  
27 of Investigation. Upon receipt of the fingerprint images and  
28 related information, the Department of Justice shall notify the  
29 department with a state or federal level criminal offender record  
30 information search response. If no state or federal level criminal  
31 record information has been recorded, the Department of Justice  
32 shall provide the department with a statement of that fact. The  
33 department shall explore options to work with private and  
34 governmental agencies to ensure that licensees have adequate  
35 access to electronic transmission sites, including requiring the  
36 department to maintain a contract for electronic transmission  
37 services in each of the district offices where facilities have  
38 indicated problems with timely access to electronic transmission  
39 sites or consistent delays of more than three business days in  
40 obtaining appointments for electronic transmission services

1 through a private entity, government agency, or law enforcement  
2 agency.

3 (b) This criminal record clearance shall be completed prior to  
4 issuing a license. Applicants shall be responsible for any costs  
5 associated with the criminal record clearance. The fee to cover  
6 the processing costs of the Department of Justice, not including  
7 the costs associated with capturing or transmitting the fingerprint  
8 images and related information, shall not exceed thirty-two  
9 dollars (\$32) for a state level criminal offender record  
10 information search, and shall not exceed twenty-four dollars  
11 (\$24) for a federal level criminal offender record information  
12 search.

13 (c) When the Licensing and Certification Program receives 95  
14 percent of its total responses indicating no evidence of recorded  
15 criminal information from the Department of Justice within three  
16 business days, it shall issue an All Facilities Letter (AFL)  
17 informing facility licensees. After the AFL is issued, licensees  
18 shall not allow newly hired nursing home administrators to have  
19 direct contact with clients or residents of the facility prior to  
20 completion of the criminal record clearance. A criminal record  
21 clearance shall be complete when the department has obtained  
22 the person's criminal offender record information search  
23 response from the Department of Justice and has determined that  
24 the person is not disqualified from engaging in the activity for  
25 which clearance is required. Notwithstanding any other provision  
26 of law, the department may, without taking regulatory action  
27 pursuant to Chapter 3.5 (commencing with Section 11340) of  
28 Part 1 of Division 3 of Title 2 of the Government Code,  
29 implement, interpret, or make specific this subdivision by means  
30 of an AFL or similar instruction.

31 (d) A criminal record clearance shall be complete when the  
32 department has obtained the person's criminal offender record  
33 information search response from the Department of Justice and  
34 has determined that the person is not disqualified from engaging  
35 in the activity for which clearance is required.

36 (e) An applicant and any other person specified in this section,  
37 as part of the background clearance process, shall provide  
38 information as to whether or not the person has any prior  
39 criminal convictions, has had any arrests within the past  
40 12-month period, or has any active arrests, and shall certify that,



1 to the best of his or her knowledge, the information provided is  
2 true. This requirement is not intended to duplicate existing  
3 requirements for individuals who are required to submit  
4 fingerprint images as part of a criminal background clearance  
5 process. Every applicant shall provide information on any prior  
6 disciplinary action taken against him or her by any federal, state,  
7 or local government agency and shall certify that, to the best of  
8 his or her knowledge, the information provided is true. An  
9 applicant or other person required to provide information  
10 pursuant to this section that knowingly or willfully makes false  
11 statements, representations, or omissions may be subject to  
12 administrative action, including, but not limited to, denial of his  
13 or her application or exemption or revocation of any exemption  
14 previously granted.

15 SEC. 4. Chapter 2.6 (commencing with Section 1499) is  
16 added to Division 2 of the Health and Safety Code, to read:

17  
18 CHAPTER 2.6. USE OF ADMINISTRATIVE ACTION FOR  
19 LICENSURE  
20

21 1499. (a) Any person or entity licensed or certificated under  
22 Chapter 1 (commencing with Section 1200), Chapter 2  
23 (commencing with Section 1250), Chapter 2.3 (commencing with  
24 Section 1400), Chapter 2.35 (commencing with Section 1416),  
25 Chapter 3.3 (commencing with Section 1570), Chapter 8  
26 (commencing with Section 1725), Chapter 8.3 (commencing with  
27 Section 1743), Chapter 8.5 (commencing with Section 1745),  
28 Chapter 8.6 (commencing with Section 1760), or Chapter 11  
29 (commencing with Section 1794.01), or under Section 1247.6 of  
30 the Business and Professions Code, shall, in addition to all other  
31 requirements, disclose as part of the application for the license or  
32 certificate any revocation or other final administrative action  
33 taken against a license, certificate, registration, or other approval  
34 to engage in a profession, vocation, or occupation, or a license or  
35 other permission to operate a facility or institution.

36 (b) The department may consider, in determining whether to  
37 grant or deny the license or certification, any final revocation or  
38 other final administrative action taken against a license,  
39 certificate, registration, or other permission to engage in a

1 profession, vocation, or occupation or a license or other  
2 permission to operate a facility or institution.

3 (c) An applicant and any other person specified in this  
4 subdivision, as part of the background clearance process, shall  
5 provide information as to whether or not the person has any prior  
6 criminal convictions, has had any arrests within the past  
7 12-month period, or has any active arrests, and shall certify that,  
8 to the best of his or her knowledge, the information provided is  
9 true. This requirement is not intended to duplicate existing  
10 requirements for individuals who are required to submit  
11 fingerprint images as part of a criminal background clearance  
12 process. Every applicant shall provide information on any prior  
13 ~~disciplinary~~ *administrative* action taken against him or her by any  
14 federal, state, or local government agency and shall certify that,  
15 to the best of his or her knowledge, the information provided is  
16 true. An applicant or other person required to provide  
17 information pursuant to this section that knowingly or willfully  
18 makes false statements, representations, or omissions may be  
19 subject to administrative action, including, but not limited to,  
20 denial of his or her application or exemption or revocation of any  
21 exemption previously granted.

22 SEC. 5. Section 1522 of the Health and Safety Code is  
23 amended to read:

24 1522. The Legislature recognizes the need to generate timely  
25 and accurate positive fingerprint identification of applicants as a  
26 condition of issuing licenses, permits, or certificates of approval  
27 for persons to operate or provide direct care services in a  
28 community care facility, foster family home, or a certified family  
29 home of a licensed foster family agency. Therefore, the  
30 Legislature supports use of electronic fingerprint image  
31 technology, to be used for applicant fingerprints. It is the intent  
32 of the Legislature in enacting this section to require the  
33 fingerprints of those individuals whose contact with community  
34 care clients may pose a risk to the clients' health and safety. An  
35 individual shall be required to obtain either a criminal record  
36 clearance or a criminal record exemption from the State  
37 Department of Social Services before his or her initial presence  
38 in a community care facility.

39 (a) (1) Before issuing a license or special permit to any person  
40 or persons to operate or manage a community care facility, the

1 State Department of Social Services shall secure from an  
2 appropriate law enforcement agency a criminal record to  
3 determine whether the applicant or any other person specified in  
4 subdivision (b) has ever been convicted of a crime other than a  
5 minor traffic violation or arrested for any crime specified in  
6 Section 290 of the Penal Code, for violating Section 245 or  
7 273.5, of the Penal Code, subdivision (b) of Section 273a of the  
8 Penal Code, or, prior to January 1, 1994, paragraph (2) of Section  
9 273a of the Penal Code, or for any crime for which the  
10 department cannot grant an exemption if the person was  
11 convicted and the person has not been exonerated.

12 (2) The criminal history information shall include the full  
13 criminal record, if any, of those persons, and subsequent arrest  
14 information pursuant to Section 11105.2 of the Penal Code.

15 (3) Except during the 2003–04, 2004–05, and 2005–06 fiscal  
16 years, neither the Department of Justice nor the State Department  
17 of Social Services may charge a fee for the fingerprinting of an  
18 applicant for a license or special permit to operate a facility  
19 providing nonmedical board, room, and care for six or less  
20 children or for obtaining a criminal record of the applicant  
21 pursuant to this section.

22 (4) The following shall apply to the criminal record  
23 information:

24 (A) If the State Department of Social Services finds that the  
25 applicant, or any other person specified in subdivision (b), has  
26 been convicted of a crime other than a minor traffic violation, the  
27 application shall be denied, unless the director grants an  
28 exemption pursuant to subdivision (g).

29 (B) If the State Department of Social Services finds that the  
30 applicant, or any other person specified in subdivision (b) is  
31 awaiting trial for a crime other than a minor traffic violation, the  
32 State Department of Social Services may cease processing the  
33 application until the conclusion of the trial.

34 (C) If no criminal record information has been recorded, the  
35 Department of Justice shall provide the applicant and the State  
36 Department of Social Services with a statement of that fact.

37 (D) If the State Department of Social Services finds after  
38 licensure that the licensee, or any other person specified in  
39 paragraph (2) of subdivision (b), has been convicted of a crime  
40 other than a minor traffic violation, the license may be revoked,

1 unless the director grants an exemption pursuant to subdivision  
2 (g).

3 (E) An applicant and any other person specified in subdivision  
4 (b) shall submit fingerprint images and related information to the  
5 Department of Justice for the purpose of searching the criminal  
6 records of the Federal Bureau of Investigation, in addition to the  
7 criminal records search required by this subdivision. If an  
8 applicant and all other persons described in subdivision (b) meet  
9 all of the conditions for licensure, except receipt of the Federal  
10 Bureau of Investigation's criminal offender record information  
11 search response for the applicant or any of the persons described  
12 in subdivision (b), the department may issue a license if the  
13 applicant and each person described in subdivision (b) has signed  
14 and submitted a statement that he or she has never been  
15 convicted of a crime in the United States, other than a traffic  
16 infraction, as defined in paragraph (1) of subdivision (a) of  
17 Section 42001 of the Vehicle Code. If, after licensure, the  
18 department determines that the licensee or any other person  
19 specified in subdivision (b) has a criminal record, the license may  
20 be revoked pursuant to Section 1550. The department may also  
21 suspend the license pending an administrative hearing pursuant  
22 to Section 1550.5.

23 (b) (1) In addition to the applicant, this section shall be  
24 applicable to criminal convictions of the following persons:

25 (A) Adults responsible for administration or direct supervision  
26 of staff.

27 (B) Any person, other than a client, residing in the facility.

28 (C) Any person who provides client assistance in dressing,  
29 grooming, bathing, or personal hygiene. Any nurse assistant or  
30 home health aide meeting the requirements of Section 1338.5 or  
31 1736.6, respectively, who is not employed, retained, or  
32 contracted by the licensee, and who has been certified or  
33 recertified on or after July 1, 1998, shall be deemed to meet the  
34 criminal record clearance requirements of this section. A certified  
35 nurse assistant and certified home health aide who will be  
36 providing client assistance and who falls under this exemption  
37 shall provide one copy of his or her current certification, prior to  
38 providing care, to the community care facility. The facility shall  
39 maintain the copy of the certification on file as long as care is  
40 being provided by the certified nurse assistant or certified home

1 health aide at the facility. Nothing in this paragraph restricts the  
2 right of the department to exclude a certified nurse assistant or  
3 certified home health aide from a licensed community care  
4 facility pursuant to Section 1558.

5 (D) Any staff person, volunteer, or employee who has contact  
6 with the clients.

7 (E) If the applicant is a firm, partnership, association, or  
8 corporation, the chief executive officer or other person serving in  
9 like capacity.

10 (F) Additional officers of the governing body of the applicant,  
11 or other persons with a financial interest in the applicant, as  
12 determined necessary by the department by regulation. The  
13 criteria used in the development of these regulations shall be  
14 based on the person's capability to exercise substantial influence  
15 over the operation of the facility.

16 (2) The following persons are exempt from the requirements  
17 applicable under paragraph (1):

18 (A) A medical professional as defined in department  
19 regulations who holds a valid license or certification from the  
20 person's governing California medical care regulatory entity and  
21 who is not employed, retained, or contracted by the licensee if all  
22 of the following apply:

23 (i) The criminal record of the person has been cleared as a  
24 condition of licensure or certification by the person's governing  
25 California medical care regulatory entity.

26 (ii) The person is providing time-limited specialized clinical  
27 care or services.

28 (iii) The person is providing care or services within the  
29 person's scope of practice.

30 (iv) The person is not a community care facility licensee or an  
31 employee of the facility.

32 (B) A third-party repair person or similar retained contractor if  
33 all of the following apply:

34 (i) The person is hired for a defined, time-limited job.

35 (ii) The person is not left alone with clients.

36 (iii) When clients are present in the room in which the  
37 repairperson or contractor is working, a staff person who has a  
38 criminal record clearance or exemption is also present.

39 (C) Employees of a licensed home health agency and other  
40 members of licensed hospice interdisciplinary teams who have a

1 contract with a client or resident of the facility and are in the  
2 facility at the request of that client or resident's legal  
3 decisionmaker. The exemption does not apply to a person who is  
4 a community care facility licensee or an employee of the facility.

5 (D) Clergy and other spiritual caregivers who are performing  
6 services in common areas of the community care facility or who  
7 are advising an individual client at the request of, or with the  
8 permission of, the client or legal decisionmaker, are exempt from  
9 fingerprint and criminal background check requirements imposed  
10 by community care licensing. This exemption does not apply to a  
11 person who is a community care licensee or employee of the  
12 facility.

13 (E) Members of fraternal, service, or similar organizations  
14 who conduct group activities for clients if all of the following  
15 apply:

- 16 (i) Members are not left alone with clients.
- 17 (ii) Members do not transport clients off the facility premises.
- 18 (iii) The same organization does not conduct group activities  
19 for clients more often than defined by the department's  
20 regulations.

21 (3) In addition to the exemptions in paragraph (2), the  
22 following persons in foster family homes, certified family homes,  
23 and small family homes are exempt from the requirements  
24 applicable under paragraph (1):

25 (A) Adult friends and family of the licensed or certified foster  
26 parent, who come into the home to visit for a length of time no  
27 longer than defined by the department in regulations, provided  
28 that the adult friends and family of the licensee are not left alone  
29 with the foster children. However, the licensee, acting as a  
30 reasonable and prudent parent, as defined in paragraph (2) of  
31 subdivision (a) of Section 362.04 of the Welfare and Institutions  
32 Code, may allow his or her adult friends and family to provide  
33 short-term care to the foster child and act as an appropriate  
34 occasional short-term babysitter for the child.

35 (B) Parents of a foster child's friends when the foster child is  
36 visiting the friend's home and the friend, licensed or certified  
37 foster parent, or both are also present. However, the licensee,  
38 acting as a reasonable and prudent parent, may allow the parent  
39 of the foster child's friends to act as an appropriate short-term  
40 babysitter for the child without the friend being present.

1 (C) Individuals who are engaged by any licensed or certified  
2 foster parent to provide short-term care to the child for periods  
3 not to exceed 24 hours. Caregivers shall use a reasonable and  
4 prudent parent standard in selecting appropriate individuals to act  
5 as appropriate occasional short-term babysitters.

6 (4) In addition to the exemptions specified in paragraph (2),  
7 the following persons in adult day care and adult day support  
8 centers are exempt from the requirements applicable under  
9 paragraph (1):

10 (A) Unless contraindicated by the client's individualized  
11 program plan (IPP) or needs and service plan, a spouse,  
12 significant other, relative, or close friend of a client, or an  
13 attendant or a facilitator for a client with a developmental  
14 disability if the attendant or facilitator is not employed, retained,  
15 or contracted by the licensee. This exemption applies only if the  
16 person is visiting the client or providing direct care and  
17 supervision to the client.

18 (B) A volunteer if all of the following applies:

19 (i) The volunteer is supervised by the licensee or a facility  
20 employee with a criminal record clearance or exemption.

21 (ii) The volunteer is never left alone with clients.

22 (iii) The volunteer does not provide any client assistance with  
23 dressing, grooming, bathing, or personal hygiene other than  
24 washing of hands.

25 (5) (A) In addition to the exemptions specified in paragraph  
26 (2), the following persons in adult residential and social  
27 rehabilitation facilities, unless contraindicated by the client's  
28 individualized program plan (IPP) or needs and services plan, are  
29 exempt from the requirements applicable under paragraph (1): a  
30 spouse, significant other, relative, or close friend of a client, or an  
31 attendant or a facilitator for a client with a developmental  
32 disability if the attendant or facilitator is not employed, retained,  
33 or contracted by the licensee. This exemption applies only if the  
34 person is visiting the client or providing direct care and  
35 supervision to that client.

36 (B) Nothing in this subdivision shall prevent a licensee from  
37 requiring a criminal record clearance of any individual exempt  
38 from the requirements of this section, provided that the  
39 individual has client contact.

1 (6) Any person similar to those described in this subdivision,  
2 as defined by the department in regulations.

3 (c) (1) Subsequent to initial licensure, any person specified in  
4 subdivision (b) and not exempted from fingerprinting shall, as a  
5 condition to employment, residence, or presence in a community  
6 care facility, be fingerprinted and sign a declaration under  
7 penalty of perjury regarding any prior criminal convictions. The  
8 licensee shall submit fingerprint images and related information  
9 to the Department of Justice and the Federal Bureau of  
10 Investigation, through the Department of Justice, for a state and  
11 federal level criminal offender record information search, or to  
12 comply with paragraph (1) of subdivision (h), prior to the  
13 person's employment, residence, or initial presence in the  
14 community care facility. These fingerprint images and related  
15 information shall be sent by electronic transmission in a manner  
16 approved by the State Department of Social Services and the  
17 Department of Justice for the purpose of obtaining a permanent  
18 set of fingerprints, and shall be submitted to the Department of  
19 Justice by the licensee. A licensee's failure to submit fingerprint  
20 images and related information to the Department of Justice or to  
21 comply with paragraph (1) of subdivision (h), as required in this  
22 section, shall result in the citation of a deficiency and the  
23 immediate assessment of civil penalties in the amount of one  
24 hundred dollars (\$100) per violation, per day for a maximum of  
25 five days, unless the violation is a second or subsequent violation  
26 within a 12-month period in which case the civil penalties shall  
27 be in the amount of one hundred dollars (\$100) per violation for  
28 a maximum of 30 days, and shall be grounds for disciplining the  
29 licensee pursuant to Section 1550. The department may assess  
30 civil penalties for continued violations as permitted by Section  
31 1548. The fingerprint images and related information shall then  
32 be transmitted to the Department of Justice for processing. Upon  
33 request of the licensee, who shall enclose a self-addressed  
34 stamped postcard for this purpose, the Department of Justice  
35 shall verify receipt of the fingerprints.

36 (2) Within 14 calendar days of the receipt of the fingerprint  
37 images, the Department of Justice shall notify the State  
38 Department of Social Services of the criminal record  
39 information, as provided for in subdivision (a). If no criminal  
40 record information has been recorded, the Department of Justice



1 shall provide the licensee and the State Department of Social  
2 Services with a statement of that fact within 14 calendar days of  
3 receipt of the fingerprint images. Documentation of the  
4 individual's clearance or exemption shall be maintained by the  
5 licensee and be available for inspection. If new fingerprint  
6 images are required for processing, the Department of Justice  
7 shall, within 14 calendar days from the date of receipt of the  
8 fingerprints, notify the licensee that the fingerprints were  
9 illegible. The Department of Justice shall notify the State  
10 Department of Social Services, as required by Section 1522.04,  
11 and shall also notify the licensee by mail, within 14 days of  
12 electronic transmission of the fingerprints to the Department of  
13 Justice, if the person has no criminal history recorded. A  
14 violation of the regulations adopted pursuant to Section 1522.04  
15 shall result in the citation of a deficiency and an immediate  
16 assessment of civil penalties in the amount of one hundred  
17 dollars (\$100) per violation, per day for a maximum of five days,  
18 unless the violation is a second or subsequent violation within a  
19 12-month period in which case the civil penalties shall be in the  
20 amount of one hundred dollars (\$100) per violation for a  
21 maximum of 30 days, and shall be grounds for disciplining the  
22 licensee pursuant to Section 1550. The department may assess  
23 civil penalties for continued violations as permitted by Section  
24 1548.

25 (3) Except for persons specified in paragraph (2) of  
26 subdivision (b), the licensee shall endeavor to ascertain the  
27 previous employment history of persons required to be  
28 fingerprinted under this subdivision. If it is determined by the  
29 State Department of Social Services, on the basis of the  
30 fingerprint images and related information submitted to the  
31 Department of Justice, that the person has been convicted of, or  
32 is awaiting trial for, a sex offense against a minor, or has been  
33 convicted for an offense specified in Section 243.4, 273a, 273d,  
34 273g, or 368 of the Penal Code, or a felony, the State Department  
35 of Social Services shall notify the licensee to act immediately to  
36 terminate the person's employment, remove the person from the  
37 community care facility, or bar the person from entering the  
38 community care facility. The State Department of Social Services  
39 may subsequently grant an exemption pursuant to subdivision  
40 (g). If the conviction or arrest was for another crime, except a

1 minor traffic violation, the licensee shall, upon notification by the  
2 State Department of Social Services, act immediately to either  
3 (A) terminate the person's employment, remove the person from  
4 the community care facility, or bar the person from entering the  
5 community care facility; or (B) seek an exemption pursuant to  
6 subdivision (g). The State Department of Social Services shall  
7 determine if the person shall be allowed to remain in the facility  
8 until a decision on the exemption is rendered. A licensee's failure  
9 to comply with the department's prohibition of employment,  
10 contact with clients, or presence in the facility as required by this  
11 paragraph shall be grounds for disciplining the licensee pursuant  
12 to Section 1550.

13 (4) The department may issue an exemption on its own motion  
14 pursuant to subdivision (g) if the person's criminal history  
15 indicates that the person is of good character based on the age,  
16 seriousness, and frequency of the conviction or convictions. The  
17 department, in consultation with interested parties, shall develop  
18 regulations to establish the criteria to grant an exemption  
19 pursuant to this paragraph.

20 (5) Concurrently with notifying the licensee pursuant to  
21 paragraph (3), the department shall notify the affected individual  
22 of his or her right to seek an exemption pursuant to subdivision  
23 (g). The individual may seek an exemption only if the licensee  
24 terminates the person's employment or removes the person from  
25 the facility after receiving notice from the department pursuant to  
26 paragraph (3).

27 (d) (1) Before issuing a license, special permit, or certificate  
28 of approval to any person or persons to operate or manage a  
29 foster family home or certified family home as described in  
30 Section 1506, the State Department of Social Services or other  
31 approving authority shall secure from an appropriate law  
32 enforcement agency a criminal record to determine whether the  
33 applicant or any person specified in subdivision (b) has ever been  
34 convicted of a crime other than a minor traffic violation or  
35 arrested for any crime specified in Section 290 of the Penal  
36 Code, for violating Section 245 or 273.5, subdivision (b) of  
37 Section 273a or, prior to January 1, 1994, paragraph (2) of  
38 Section 273a of the Penal Code, or for any crime for which the  
39 department cannot grant an exemption if the person was  
40 convicted and the person has not been exonerated.

1 (2) The criminal history information shall include the full  
2 criminal record, if any, of those persons.

3 (3) Neither the Department of Justice nor the State Department  
4 of Social Services may charge a fee for the fingerprinting of an  
5 applicant for a license, special permit, or certificate of approval  
6 described in this subdivision. The record, if any, shall be taken  
7 into consideration when evaluating a prospective applicant.

8 (4) The following shall apply to the criminal record  
9 information:

10 (A) If the applicant or other persons specified in subdivision  
11 (b) have convictions that would make the applicant's home unfit  
12 as a foster family home or a certified family home, the license,  
13 special permit, or certificate of approval shall be denied.

14 (B) If the State Department of Social Services finds that the  
15 applicant, or any person specified in subdivision (b) is awaiting  
16 trial for a crime other than a minor traffic violation, the State  
17 Department of Social Services or other approving authority may  
18 cease processing the application until the conclusion of the trial.

19 (C) For the purposes of this subdivision, a criminal record  
20 clearance provided under Section 8712 of the Family Code may  
21 be used by the department or other approving agency.

22 (D) An applicant for a foster family home license or for  
23 certification as a family home, and any other person specified in  
24 subdivision (b), shall submit a set of fingerprint images and  
25 related information to the Department of Justice and the Federal  
26 Bureau of Investigation, through the Department of Justice, for a  
27 state and federal level criminal offender record information  
28 search, in addition to the criminal records search required by  
29 subdivision (a). If an applicant meets all other conditions for  
30 licensure, except receipt of the Federal Bureau of Investigation's  
31 criminal history information for the applicant and all persons  
32 described in subdivision (b), the department may issue a license,  
33 or the foster family agency may issue a certificate of approval, if  
34 the applicant, and each person described in subdivision (b), has  
35 signed and submitted a statement that he or she has never been  
36 convicted of a crime in the United States, other than a traffic  
37 infraction, as defined in paragraph (1) of subdivision (a) of  
38 Section 42001 of the Vehicle Code. If, after licensure or  
39 certification, the department determines that the licensee,  
40 certified foster parent, or any person specified in subdivision (b)

1 has a criminal record, the license may be revoked pursuant to  
2 Section 1550 and the certificate of approval revoked pursuant to  
3 subdivision (b) of Section 1534. The department may also  
4 suspend the license pending an administrative hearing pursuant  
5 to Section 1550.5.

6 (5) Any person specified in this subdivision shall, as a part of  
7 the application, be fingerprinted and sign a declaration under  
8 penalty of perjury regarding any prior criminal convictions or  
9 arrests for any crime against a child, spousal or cohabitant abuse  
10 or, any crime for which the department cannot grant an  
11 exemption if the person was convicted and shall submit these  
12 fingerprints to the licensing agency or other approving authority.

13 (6) (A) The foster family agency shall obtain fingerprint  
14 images and related information from certified home applicants  
15 and from persons specified in subdivision (b) and shall submit  
16 them directly to the Department of Justice by electronic  
17 transmission in a manner approved by the State Department of  
18 Social Services and the Department of Justice. A foster family  
19 home licensee or foster family agency shall submit these  
20 fingerprint images and related information to the Department of  
21 Justice and the Federal Bureau of Investigation, through the  
22 Department of Justice, for a state and federal level criminal  
23 offender record information search, or to comply with paragraph  
24 (1) of subdivision (b) prior to the person's employment,  
25 residence, or initial presence in the foster family home or  
26 certified family home. A foster family agency's failure to submit  
27 fingerprint images and related information to the Department of  
28 Justice, or comply with paragraph (1) of subdivision (h), as  
29 required in this section, shall result in a citation of a deficiency,  
30 and the immediate civil penalties of one hundred dollars (\$100)  
31 per violation, per day for a maximum of five days, unless the  
32 violation is a second or subsequent violation within a 12-month  
33 period in which case the civil penalties shall be in the amount of  
34 one hundred dollars (\$100) per violation for a maximum of 30  
35 days, and shall be grounds for disciplining the licensee pursuant  
36 to Section 1550. A violation of the regulation adopted pursuant to  
37 Section 1522.04 shall result in the citation of a deficiency and an  
38 immediate assessment of civil penalties in the amount of one  
39 hundred dollars (\$100) per violation, per day for a maximum of  
40 five days, unless the violation is a second or subsequent violation

1 within a 12-month period in which case the civil penalties shall  
2 be in the amount of one hundred dollars (\$100) per violation for  
3 a maximum of 30 days, and shall be grounds for disciplining the  
4 foster family agency pursuant to Section 1550. A licensee's  
5 failure to submit fingerprint images and related information to  
6 the Department of Justice, or comply with paragraph (1) of  
7 subdivision (h), as required in this section, may result in the  
8 citation of a deficiency and immediate civil penalties of one  
9 hundred dollars (\$100) per violation. A licensee's violation of  
10 regulations adopted pursuant to Section 1522.04 may result in the  
11 citation of a deficiency and an immediate assessment of civil  
12 penalties in the amount of one hundred dollars (\$100) per  
13 violation. The State Department of Social Services may assess  
14 penalties for continued violations, as permitted by Section 1548.  
15 The fingerprint images and related information shall then be  
16 transmitted to the Department of Justice for processing.

17 (B) Upon request of the licensee, who shall enclose a  
18 self-addressed envelope for this purpose, the Department of  
19 Justice shall verify receipt of the fingerprints. Within five  
20 working days of the receipt of the criminal record or information  
21 regarding criminal convictions from the Department of Justice,  
22 the department shall notify the applicant of any criminal arrests  
23 or convictions. If no arrests or convictions are recorded, the  
24 Department of Justice shall provide the foster family home  
25 licensee or the foster family agency with a statement of that fact  
26 concurrent with providing the information to the State  
27 Department of Social Services.

28 (7) If the State Department of Social Services finds that the  
29 applicant, or any other person specified in subdivision (b), has  
30 been convicted of a crime other than a minor traffic violation, the  
31 application shall be denied, unless the director grants an  
32 exemption pursuant to subdivision (g).

33 (8) If the State Department of Social Services finds after  
34 licensure or the granting of the certificate of approval that the  
35 licensee, certified foster parent, or any other person specified in  
36 paragraph (2) of subdivision (b), has been convicted of a crime  
37 other than a minor traffic violation, the license or certificate of  
38 approval may be revoked by the department or the foster family  
39 agency, whichever is applicable, unless the director grants an  
40 exemption pursuant to subdivision (g). A licensee's failure to

1 comply with the department's prohibition of employment,  
2 contact with clients, or presence in the facility as required by  
3 paragraph (3) of subdivision (c) shall be grounds for disciplining  
4 the licensee pursuant to Section 1550.

5 (e) The State Department of Social Services may not use a  
6 record of arrest to deny, revoke, or terminate any application,  
7 license, employment, or residence unless the department  
8 investigates the incident and secures evidence, whether or not  
9 related to the incident of arrest, that is admissible in an  
10 administrative hearing to establish conduct by the person that  
11 may pose a risk to the health and safety of any person who is or  
12 may become a client. The State Department of Social Services is  
13 authorized to obtain any arrest or conviction records or reports  
14 from any law enforcement agency as necessary to the  
15 performance of its duties to inspect, license, and investigate  
16 community care facilities and individuals associated with a  
17 community care facility.

18 (f) (1) For purposes of this section or any other provision of  
19 this chapter, a conviction means a plea or verdict of guilty or a  
20 conviction following a plea of nolo contendere. Any action that  
21 the State Department of Social Services is permitted to take  
22 following the establishment of a conviction may be taken when  
23 the time for appeal has elapsed, when the judgment of conviction  
24 has been affirmed on appeal, or when an order granting probation  
25 is made suspending the imposition of sentence, notwithstanding  
26 a subsequent order pursuant to Sections 1203.4 and 1203.4a of  
27 the Penal Code permitting the person to withdraw his or her plea  
28 of guilty and to enter a plea of not guilty, or setting aside the  
29 verdict of guilty, or dismissing the accusation, information, or  
30 indictment. For purposes of this section or any other provision of  
31 this chapter, the record of a conviction, or a copy thereof certified  
32 by the clerk of the court or by a judge of the court in which the  
33 conviction occurred, shall be conclusive evidence of the  
34 conviction. For purposes of this section or any other provision of  
35 this chapter, the arrest disposition report certified by the  
36 Department of Justice, or documents admissible in a criminal  
37 action pursuant to Section 969b of the Penal Code, shall be prima  
38 facie evidence of the conviction, notwithstanding any other  
39 provision of law prohibiting the admission of these documents in  
40 a civil or administrative action.

1 (2) For purposes of this section or any other provision of this  
2 chapter, the department shall consider criminal convictions from  
3 another state or federal court as if the criminal offense was  
4 committed in this state.

5 (g) (1) After review of the record, the director may grant an  
6 exemption from disqualification for a license or special permit as  
7 specified in paragraphs (1) and (4) of subdivision (a), or for a  
8 license, special permit, or certificate of approval as specified in  
9 paragraphs (4) and (5) of subdivision (d), or for employment,  
10 residence, or presence in a community care facility as specified  
11 in paragraphs (3), (4), and (5) of subdivision (c), if the director  
12 has substantial and convincing evidence to support a reasonable  
13 belief that the applicant and the person convicted of the crime, if  
14 other than the applicant, are of good character as to justify  
15 issuance of the license or special permit or granting an exemption  
16 for purposes of subdivision (c). Except as otherwise provided in  
17 this subdivision, an exemption may not be granted pursuant to  
18 this subdivision if the conviction was for any of the following  
19 offenses:

20 (A) (i) An offense specified in Section 220, 243.4, or 264.1,  
21 subdivision (a) of Section 273a or, prior to January 1, 1994,  
22 paragraph (1) of Section 273a, Section 273d, 288, or 289,  
23 subdivision (a) of Section 290, or Section 368 of the Penal Code,  
24 or was a conviction of another crime against an individual  
25 specified in subdivision (c) of Section 667.5 of the Penal Code.

26 (ii) Notwithstanding clause (i), the director may grant an  
27 exemption regarding the conviction for an offense described in  
28 paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5  
29 of the Penal Code, if the employee or prospective employee has  
30 been rehabilitated as provided in Section 4852.03 of the Penal  
31 Code, has maintained the conduct required in Section 4852.05 of  
32 the Penal Code for at least 10 years, and has the recommendation  
33 of the district attorney representing the employee's county of  
34 residence, or if the employee or prospective employee has  
35 received a certificate of rehabilitation pursuant to Chapter 3.5  
36 (commencing with Section 4852.01) of Title 6 of Part 3 of the  
37 Penal Code.

38 (B) A felony offense specified in Section 729 of the Business  
39 and Professions Code or Section 206 or 215, subdivision (a) of

1 Section 347, subdivision (b) of Section 417, or subdivision (a) of  
2 Section 451 of the Penal Code.

3 (2) The department may not prohibit a person from being  
4 employed or having contact with clients in a facility on the basis  
5 of a denied criminal record exemption request or arrest  
6 information unless the department complies with the  
7 requirements of Section 1558.

8 (h) (1) For purposes of compliance with this section, the  
9 department may permit an individual to transfer a current  
10 criminal record clearance, as defined in subdivision (a), from one  
11 facility to another, as long as the criminal record clearance has  
12 been processed through a state licensing district office, and is  
13 being transferred to another facility licensed by a state licensing  
14 district office. The request shall be in writing to the State  
15 Department of Social Services, and shall include a copy of the  
16 person's driver's license or valid identification card issued by the  
17 Department of Motor Vehicles, or a valid photo identification  
18 issued by another state or the United States government if the  
19 person is not a California resident. Upon request of the licensee,  
20 who shall enclose a self-addressed envelope for this purpose, the  
21 State Department of Social Services shall verify whether the  
22 individual has a clearance that can be transferred.

23 (2) The State Department of Social Services shall hold  
24 criminal record clearances in its active files for a minimum of  
25 two years after an employee is no longer employed at a licensed  
26 facility in order for the criminal record clearance to be  
27 transferred.

28 (3) The following shall apply to a criminal record clearance or  
29 exemption from the department or a county office with  
30 department delegated licensing authority:

31 (A) A county office with department delegated licensing  
32 authority may accept a clearance or exemption from the  
33 department.

34 (B) The department may accept a clearance or exemption from  
35 any county office with department delegated licensing authority.

36 (C) A county office with department delegated licensing  
37 authority may accept a clearance or exemption from any other  
38 county office with department delegated licensing authority.

39 (4) With respect to notifications issued by the Department of  
40 Justice pursuant to Section 11105.2 of the Penal Code concerning



1 an individual whose criminal record clearance was originally  
2 processed by the department or a county office with department  
3 delegated licensing authority, all of the following shall apply:

4 (A) The Department of Justice shall process a request from the  
5 department or a county office with department delegated  
6 licensing authority to receive the notice only if all of the  
7 following conditions are met:

8 (i) The request shall be submitted to the Department of Justice  
9 by the agency to be substituted to receive the notification.

10 (ii) The request shall be for the same applicant type as the  
11 type for which the original clearance was obtained.

12 (iii) The request shall contain all prescribed data elements and  
13 format protocols pursuant to a written agreement between the  
14 department and the Department of Justice.

15 (B) (i) On or before January 7, 2005, the department shall  
16 notify the Department of Justice of all county offices that have  
17 department delegated licensing authority.

18 (ii) The department shall notify the Department of Justice  
19 within 15 calendar days of the date on which a new county office  
20 receives department delegated licensing authority or a county's  
21 delegated licensing authority is rescinded.

22 (C) The Department of Justice shall charge the department or  
23 a county office with department delegated licensing authority a  
24 fee for each time a request to substitute the recipient agency is  
25 received for purposes of this paragraph. This fee shall not exceed  
26 the cost of providing the service.

27 (i) The full criminal record obtained for purposes of this  
28 section may be used by the department or by a licensed adoption  
29 agency as a clearance required for adoption purposes.

30 (j) If a licensee or facility is required by law to deny  
31 employment or to terminate employment of any employee based  
32 on written notification from the state department that the  
33 employee has a prior criminal conviction or is determined  
34 unsuitable for employment under Section 1558, the licensee or  
35 facility shall not incur civil liability or unemployment insurance  
36 liability as a result of that denial or termination.

37 (k) The State Department of Social Services may charge a fee  
38 for the costs of processing electronic fingerprint images and  
39 related information.

(l) Amendments to this section made in the 1999 portion of the 1999–2000 Regular Session shall be implemented commencing 60 days after the effective date of the act amending this section in the 1999 portion of the 1999–2000 Regular Session, except that those provisions for the submission of fingerprints for searching the records of the Federal Bureau of Investigation shall be implemented 90 days after the effective date of that act.

SEC. 6. Section 1522.08 is added to the Health and Safety Code, to read:

1522.08. (a) In order to protect the health and safety of persons receiving care or services from individuals or facilities licensed or certified by the state, the California Department of Aging, State Department of Health Services, State Department of Alcohol and Drug Programs, State Department of Mental Health, State Department of Social Services, and the Emergency Medical Services Authority may share information with respect to applicants, licensees, certificates, or individuals who have been the subject of any administrative action resulting in the denial, suspension, probation, or revocation of a license, permit, or certificate, or in the exclusion of any person from a facility who is subject to a background check, as otherwise provided by law. The law.

(b) The State Department of Social Services shall maintain a centralized system for the monitoring and tracking of final administrative actions, to be used by the California Department of Aging, State Department of Health Services, State Department of Alcohol and Drug Programs, State Department of Mental Health, State Department of Social Services, and the Emergency Medical Services Authority as a part of the background check process. *The State Department of Social Services may charge a fee to departments under the jurisdiction of the California Health and Human Services Agency sufficient to cover the cost of providing those departments with the final administrative action specified in subdivision (a). To the extent that additional funds are needed for this purpose, implementation of this subdivision shall be contingent upon a specific appropriation provided for this purpose in the annual Budget Act.*

~~(b)~~

(c) The State Department of Social Services, in consultation with the other departments under the jurisdiction of the

1 California Health and Human Services Agency, may adopt  
2 regulations to implement this section.

3 ~~(e) The State Department of Social Services may charge a fee~~  
4 ~~to departments under the jurisdiction of the California Health and~~  
5 ~~Human Services Agency sufficient to cover the cost of providing~~  
6 ~~those departments with the final administrative action specified~~  
7 ~~in subdivision (a).~~

8 (d) For the purposes of this section and Section 1499,  
9 “administrative action” means any proceeding initiated by the  
10 California Department of Aging, State Department of Health  
11 Services, State Department of Alcohol and Drug Programs, State  
12 Department of Mental Health, State Department of Social  
13 Services, and the Emergency Medical Services Authority to  
14 determine the rights and duties of an applicant, licensee, or other  
15 individual or entity over which the department has jurisdiction.  
16 “Administrative action” may include, but is not limited to, action  
17 involving the denial of an application for, or the suspension or  
18 revocation of, any license, special permit, administrator  
19 certificate, criminal record clearance, or exemption.

20 SEC. 7. Section 1526.5 of the Health and Safety Code is  
21 amended to read:

22 1526.5. (a) Within 90 days after a facility accepts its first  
23 client for placement following the issuance of a license or special  
24 permit pursuant to Section 1525, the department shall inspect the  
25 facility. The licensee shall, within five business days after  
26 accepting its first client for placement, notify the department that  
27 the facility has commenced operating. Foster family homes are  
28 exempt from the provisions of this subdivision.

29 (b) The inspection required by subdivision (a) shall be  
30 conducted to evaluate compliance with rules and regulations and  
31 to assess the facility’s continuing ability to meet regulatory  
32 requirements. The department may take appropriate remedial  
33 action as authorized by this chapter.

34 SEC. 8. Section 1568.07 of the Health and Safety Code is  
35 amended to read:

36 1568.07. (a) (1) Within 90 days after a facility accepts its  
37 first resident for placement following its initial licensure, the  
38 department shall inspect the facility to evaluate compliance with  
39 rules and regulations and to assess the facility’s continuing  
40 ability to meet regulatory requirements. The licensee shall notify

1 the department, within five business days after accepting its first  
2 resident for placement, that the facility has commenced  
3 operating.

4 (2) The department may take appropriate remedial action as  
5 provided for in this chapter.

6 (b) (1) Every licensed residential care facility shall be  
7 periodically inspected and evaluated for quality of care by a  
8 representative or representatives designated by the director.  
9 Evaluations shall be conducted at least annually and as often as  
10 necessary to ensure the quality of care being provided.

11 (2) During each licensing inspection the department shall  
12 determine if the facility meets regulatory standards, including,  
13 but not limited to, providing residents with the appropriate level  
14 of care based on the facility's license, providing adequate  
15 staffing and services, updated resident records and assessments,  
16 and compliance with basic health and safety standards.

17 (3) If the department determines that a resident requires a  
18 higher level of care than the facility is authorized to provide, the  
19 department may initiate a professional level of care assessment  
20 by an assessor approved by the department. An assessment shall  
21 be conducted in consultation with the resident, the resident's  
22 physician and surgeon, and the resident's case manager, and shall  
23 reflect the desires of the resident, the resident's physician and  
24 surgeon, and the resident's case manager. The assessment also  
25 shall recognize that certain illnesses are episodic in nature and  
26 that the resident's need for a higher level of care may be  
27 temporary.

28 (4) The department shall notify the residential care facility in  
29 writing of all deficiencies in its compliance with this chapter and  
30 the rules and regulations adopted pursuant to this chapter, and  
31 shall set a reasonable length of time for compliance by the  
32 facility.

33 (5) Reports on the results of each inspection, evaluation, or  
34 consultation shall be kept on file in the department, and all  
35 inspection reports, consultation reports, lists of deficiencies, and  
36 plans of correction shall be open to public inspection in the  
37 county in which the facility is located.

38 (c) Any duly authorized officer, employee, or agent of the  
39 department may, upon presentation of proper identification, enter  
40 and inspect any place providing personal care, supervision, and

1 services, at any time, with or without advance notice, to secure  
2 compliance with, or to prevent a violation of, this chapter.

3 (d) No licensee shall discriminate or retaliate in any manner  
4 against any person receiving the services of the facility of the  
5 licensee, or against any employee of the facility, on the basis, or  
6 for the reason, that a person or employee or any other person has  
7 initiated or participated in an inspection pursuant to Section  
8 1568.071.

9 (e) Any person who, without lawful authorization from a duly  
10 authorized officer, employee, or agent of the department, informs  
11 an owner, operator, employee, agent, or resident of a residential  
12 care facility, of an impending or proposed inspection or  
13 evaluation of that facility by personnel of the department, is  
14 guilty of a misdemeanor and upon conviction thereof shall be  
15 punished by a fine not to exceed one thousand dollars (\$1,000),  
16 by imprisonment in the county jail for a period not to exceed 180  
17 days, or by both a fine and imprisonment.

18 SEC. 9. Section 1568.09 of the Health and Safety Code is  
19 amended to read:

20 1568.09. It is the intent of the Legislature in enacting this  
21 section to require the electronic fingerprint images of those  
22 individuals whose contact with residents of residential care  
23 facilities for persons with a chronic, life-threatening illness may  
24 pose a risk to the residents' health and safety.

25 It is the intent of the Legislature, in enacting this section, to  
26 require the electronic fingerprint images of those individuals  
27 whose contact with community care clients may pose a risk to the  
28 clients' health and safety. An individual shall be required to  
29 obtain either a criminal record clearance or a criminal record  
30 exemption from the State Department of Social Services before  
31 his or her initial presence in a residential care facility for persons  
32 with chronic, life-threatening illness.

33 (a) (1) Before issuing a license to any person or persons to  
34 operate or manage a residential care facility, the department shall  
35 secure from an appropriate law enforcement agency a criminal  
36 record to determine whether the applicant or any other person  
37 specified in subdivision (b) has ever been convicted of a crime  
38 other than a minor traffic violation or arrested for any crime  
39 specified in Section 290 of the Penal Code, for violating Section  
40 245 or 273.5, subdivision (b) of Section 273a or, prior to January

1 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for  
2 any crime for which the department cannot grant an exemption if  
3 the person was convicted and the person has not been exonerated.

4 (2) The criminal history information shall include the full  
5 criminal record if any, of those persons, and subsequent arrest  
6 information pursuant to Section 11105.2 of the Penal Code.

7 (3) The following shall apply to the criminal record  
8 information:

9 (A) If the State Department of Social Services finds that the  
10 applicant or any other person specified in subdivision (b) has  
11 been convicted of a crime, other than a minor traffic violation,  
12 the application shall be denied, unless the director grants an  
13 exemption pursuant to subdivision (f).

14 (B) If the State Department of Social Services finds that the  
15 applicant, or any other person specified in subdivision (b) is  
16 awaiting trial for a crime other than a minor traffic violation, the  
17 State Department of Social Services may cease processing the  
18 application until the conclusion of the trial.

19 (C) If no criminal record information has been recorded, the  
20 Department of Justice shall provide the applicant and the State  
21 Department of Social Services with a statement of that fact.

22 (D) If the State Department of Social Services finds after  
23 licensure that the licensee, or any other person specified in  
24 paragraph (2) of subdivision (b), has been convicted of a crime  
25 other than a minor traffic violation, the license may be revoked,  
26 unless the director grants an exemption pursuant to subdivision  
27 (f).

28 (E) An applicant and any other person specified in subdivision  
29 (b) shall submit fingerprint images and related information to the  
30 Department of Justice and the Federal Bureau of Investigation,  
31 through the Department of Justice, for a state and federal level  
32 criminal offender record information search, in addition to the  
33 search required by this subdivision. If an applicant meets all  
34 other conditions for licensure, except receipt of the Federal  
35 Bureau of Investigation's criminal history information for the  
36 applicant and persons listed in subdivision (b), the department  
37 may issue a license if the applicant and each person described by  
38 subdivision (b) has signed and submitted a statement that he or  
39 she has never been convicted of a crime in the United States,  
40 other than a traffic infraction as defined in paragraph (1) of

1 subdivision (a) of Section 42001 of the Vehicle Code. If, after  
2 licensure, the department determines that the licensee or person  
3 specified in subdivision (b) has a criminal record, the license may  
4 be revoked pursuant to subdivision (a) of Section 1568.082. The  
5 department may also suspend the license pending an  
6 administrative hearing pursuant to subdivision (b) of  
7 Section 1568.082.

8 (b) In addition to the applicant, the provisions of this section  
9 shall be applicable to criminal convictions of the following  
10 persons:

11 (1) Adults responsible for administration or direct supervision  
12 of staff of the facility.

13 (2) Any person, other than a resident, residing in the facility.

14 (3) Any person who provides resident assistance in dressing,  
15 grooming, bathing, or personal hygiene. Any nurse assistant or  
16 home health aide meeting the requirements of Section 1338.5 or  
17 1736.6, respectively, who is not employed, retained, or  
18 contracted by the licensee, and who has been certified or  
19 recertified on or after July 1, 1998, shall be deemed to meet the  
20 criminal record clearance requirements of this section. A certified  
21 nurse assistant and certified home health aide who will be  
22 providing client assistance and who falls under this exemption  
23 shall provide one copy of his or her current certification, prior to  
24 providing care, to the residential care facility for persons with  
25 chronic, life-threatening illness. The facility shall maintain the  
26 copy of the certification on file as long as care is being provided  
27 by the certified nurse assistant or certified home health aide at the  
28 facility. Nothing in this paragraph restricts the right of the  
29 department to exclude a certified nurse assistant or certified  
30 home health aide from a licensed residential care facility for  
31 persons with chronic, life-threatening illness pursuant to Section  
32 1568.092.

33 (4) (A) Any staff person, volunteer, or employee who has  
34 contact with the residents.

35 (B) A volunteer shall be exempt from the requirements of this  
36 subdivision if he or she is a relative, significant other, or close  
37 friend of a client receiving care in the facility and the volunteer  
38 does not provide direct care and supervision of residents. A  
39 volunteer who provides direct care and supervision shall be  
40 exempt if the volunteer is a resident's spouse, significant other,

1 close friend, or family member and provides direct care and  
2 supervision to that resident only at the request of the resident.  
3 The department may define in regulations persons similar to  
4 those described in this subparagraph who may be exempt from  
5 the requirements of this subdivision.

6 (5) If the applicant is a firm, partnership, association, or  
7 corporation, the chief executive officer or other person serving in  
8 that capacity.

9 (6) Additional officers of the governing body of the applicant,  
10 or other persons with a financial interest in the applicant, as  
11 determined necessary by the department by regulation. The  
12 criteria used in the development of these regulations shall be  
13 based on the person's capability to exercise substantial influence  
14 over the operation of the facility.

15 (c) (1) (A) Subsequent to initial licensure, any person  
16 specified in subdivision (b) and not exempted from fingerprinting  
17 shall, as a condition to employment, residence, or presence in a  
18 residential care facility, be fingerprinted and sign a declaration  
19 under penalty of perjury regarding any prior criminal  
20 convictions. The licensee shall submit fingerprint images and  
21 related information to the Department of Justice and the Federal  
22 Bureau of Investigation, through the Department of Justice, for a  
23 state and federal level criminal offender record information  
24 search, or to comply with paragraph (1) of subdivision (g), prior  
25 to the person's employment, residence, or initial presence in the  
26 residential care facility.

27 (B) These fingerprint images and related information shall be  
28 electronically submitted to the Department of Justice in a manner  
29 approved by the State Department of Social Services and the  
30 Department of Justice, for the purpose of obtaining a permanent  
31 set of fingerprints. A licensee's failure to submit fingerprint  
32 images and related information to the Department of Justice, or  
33 to comply with paragraph (1) of subdivision (g), as required in  
34 this section, shall result in the citation of a deficiency and an  
35 immediate assessment of civil penalties in the amount of one  
36 hundred dollars (\$100) per violation, per day for a maximum of  
37 five days, unless the violation is a second or subsequent violation  
38 within a 12-month period in which case the civil penalties shall  
39 be in the amount of one hundred dollars (\$100) per violation for  
40 a maximum of 30 days, and shall be grounds for disciplining the



1 licensee pursuant to Section 1568.082. The State Department of  
2 Social Services may assess civil penalties for continued  
3 violations as allowed in Section 1568.0822. The fingerprint  
4 images and related information shall then be submitted to the  
5 Department of Justice for processing. The licensee shall maintain  
6 and make available for inspection documentation of the  
7 individual's clearance or exemption.

8 (2) A violation of the regulations adopted pursuant to Section  
9 1522.04 shall result in the citation of a deficiency and an  
10 immediate assessment of civil penalties in the amount of one  
11 hundred dollars (\$100) per violation per day for a maximum of  
12 five days, unless the violation is a second or subsequent violation  
13 within a 12-month period in which case the civil penalties shall  
14 be in the amount of one hundred dollars (\$100) per violation for  
15 a maximum of 30 days, and shall be grounds for disciplining the  
16 licensee pursuant to Section 1568.082. The department may  
17 assess civil penalties for continued violations as permitted by  
18 Section 1568.0822.

19 (3) Within 14 calendar days of the receipt of the fingerprint  
20 images, the Department of Justice shall notify the State  
21 Department of Social Services of the criminal record  
22 information, as provided for in this subdivision. If no criminal  
23 record information has been recorded, the Department of Justice  
24 shall provide the licensee and the State Department of Social  
25 Services with a statement of that fact within 14 calendar days of  
26 receipt of the fingerprints. If new fingerprint images are required  
27 for processing, the Department of Justice shall, within 14  
28 calendar days from the date of receipt of the fingerprints, notify  
29 the licensee that the fingerprints were illegible. The Department  
30 of Justice shall notify the department, as required by Section  
31 1522.04, and shall notify the licensee by mail within 14 days of  
32 electronic transmission of the fingerprints to the Department of  
33 Justice, if the person has no criminal history record.

34 (4) Except for persons specified in paragraph (2) of  
35 subdivision (b), the licensee shall endeavor to ascertain the  
36 previous employment history of persons required to be  
37 fingerprinted under this subdivision. If it is determined by the  
38 State Department of Social Services, on the basis of the  
39 fingerprints submitted to the Department of Justice, that the  
40 person has been convicted of a sex offense against a minor, an

1 offense specified in Section 243.4, 273a, 273d, 273g, or 368 of  
2 the Penal Code, or a felony, the department shall notify the  
3 licensee to act immediately to terminate the person's  
4 employment, remove the person from the residential care facility,  
5 or bar the person from entering the residential care facility. The  
6 department may subsequently grant an exemption pursuant to  
7 subdivision (f). If the conviction was for another crime, except a  
8 minor traffic violation, the licensee shall, upon notification by the  
9 department, act immediately to either (1) terminate the person's  
10 employment, remove the person from the residential care facility,  
11 or bar the person from entering the residential care facility; or (2)  
12 seek an exemption pursuant to subdivision (f). The department  
13 shall determine if the person shall be allowed to remain in the  
14 facility until a decision on the exemption is rendered. A  
15 licensee's failure to comply with the department's prohibition of  
16 employment, contact with clients, or presence in the facility as  
17 required by this paragraph shall result in a citation of deficiency  
18 and an immediate assessment of civil penalties by the department  
19 against the licensee, in the amount of one hundred dollars (\$100)  
20 per violation, per day for a maximum of five days, unless the  
21 violation is a second or subsequent violation within a 12-month  
22 period in which case the civil penalties shall be in the amount of  
23 one hundred dollars (\$100) per violation for a maximum of 30  
24 days, and shall be grounds for disciplining the licensee pursuant  
25 to Section 1568.082.

26 (5) The department may issue an exemption on its own motion  
27 pursuant to subdivision (f) if the person's criminal history  
28 indicates that the person is of good character based on the age,  
29 seriousness, and frequency of the conviction or convictions. The  
30 department, in consultation with interested parties, shall develop  
31 regulations to establish the criteria to grant an exemption  
32 pursuant to this paragraph.

33 (6) Concurrently with notifying the licensee pursuant to  
34 paragraph (4), the department shall notify the affected individual  
35 of his or her right to seek an exemption pursuant to subdivision  
36 (f). The individual may seek an exemption only if the licensee  
37 terminates the person's employment or removes the person from  
38 the facility after receiving notice from the department pursuant to  
39 paragraph (4).

1 (d) (1) For purposes of this section or any other provision of  
2 this chapter, a conviction means a plea or verdict of guilty or a  
3 conviction following a plea of nolo contendere. Any action that  
4 the department is permitted to take following the establishment  
5 of a conviction may be taken when the time for appeal has  
6 elapsed, when the judgment of conviction has been affirmed on  
7 appeal, or when an order granting probation is made suspending  
8 the imposition of the sentence, notwithstanding a subsequent  
9 order pursuant to Sections 1203.4 and 1203.4a of the Penal Code  
10 permitting that person to withdraw his or her plea of guilty and to  
11 enter a plea of not guilty, setting aside the verdict of guilty, or  
12 dismissing the accusation, information, or indictment. For  
13 purposes of this chapter, the record of a conviction, or a copy  
14 thereof certified by the clerk of the court or by a judge of the  
15 court in which the conviction occurred, shall be conclusive  
16 evidence of the conviction. For purposes of this section or any  
17 other provision of this chapter, the arrest disposition report  
18 certified by the Department of Justice, or documents admissible  
19 in a criminal action pursuant to Section 969b of the Penal Code,  
20 shall be prima facie evidence of the conviction, notwithstanding  
21 any other provision of law prohibiting the admission of these  
22 documents in a civil or administrative action.

23 (2) For purposes of this section or any other provision of this  
24 chapter, the department shall consider criminal convictions from  
25 another state or federal court as if the criminal offense was  
26 committed in this state.

27 (e) The State Department of Social Services may not use a  
28 record of arrest to deny, revoke, or terminate any application,  
29 license, employment, or residence unless the department  
30 investigates the incident and secures evidence, whether or not  
31 related to the incident of arrest, that is admissible in an  
32 administrative hearing to establish conduct by the person that  
33 may pose a risk to the health and safety of any person who is or  
34 may become a client. The State Department of Social Services is  
35 authorized to obtain any arrest or conviction records or reports  
36 from any law enforcement agency as necessary to the  
37 performance of its duties to inspect, license, and investigate  
38 community care facilities and individuals associated with a  
39 community care facility.

(f) (1) After review of the record, the director may grant an exemption from disqualification for a license as specified in paragraphs (1) and (4) of subdivision (a), or for employment, residence, or presence in a residential care facility as specified in paragraphs (4), (5), and (6) of subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, an exemption may not be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) An offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (a) of Section 290, or Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(B) A felony offense specified in Section 729 of the Business and Professional Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) of Section 451 of the Penal Code.

(2) The department may not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1568.092.

(g) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be in writing to the department, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed stamped envelope for this purpose, the department

1 shall verify whether the individual has a clearance that can be  
2 transferred.

3 (2) The State Department of Social Services shall hold  
4 criminal record clearances in its active files for a minimum of  
5 two years after an employee is no longer employed at a licensed  
6 facility in order for the criminal record clearance to be  
7 transferred.

8 (h) If a licensee or facility is required by law to deny  
9 employment or to terminate employment of any employee based  
10 on written notification from the state department that the  
11 employee has a prior criminal conviction or is determined  
12 unsuitable for employment under Section 1568.092, the licensee  
13 or facility shall not incur civil liability or unemployment  
14 insurance liability as a result of that denial or termination.

15 (i) (1) The Department of Justice shall charge a fee sufficient  
16 to cover its cost in providing services to comply with the 14-day  
17 requirement contained in subdivision (c) for provision to the  
18 department of criminal record information.

19 (2) Paragraph (1) shall cease to be implemented when the  
20 department adopts emergency regulations pursuant to Section  
21 1522.04, and shall become inoperative when permanent  
22 regulations are adopted under that section.

23 SEC. 10. Section 1569.17 of the Health and Safety Code is  
24 amended to read:

25 1569.17. The Legislature recognizes the need to generate  
26 timely and accurate positive fingerprint identification of  
27 applicants as a condition of issuing licenses, permits, or  
28 certificates of approval for persons to operate or provide direct  
29 care services in a residential care facility for the elderly. It is the  
30 intent of the Legislature in enacting this section to require the  
31 fingerprints of those individuals whose contact with clients of  
32 residential care facilities for the elderly may pose a risk to the  
33 clients' health and safety. An individual shall be required to  
34 obtain either a criminal record clearance or a criminal record  
35 exemption from the State Department of Social Services before  
36 his or her initial presence in a residential care facility for the  
37 elderly.

38 (a) (1) Before issuing a license to any person or persons to  
39 operate or manage a residential care facility for the elderly, the  
40 department shall secure from an appropriate law enforcement

1 agency a criminal record to determine whether the applicant or  
2 any other person specified in subdivision (b) has ever been  
3 convicted of a crime other than a minor traffic violation or  
4 arrested for any crime specified in Section 290 of the Penal  
5 Code, for violating Section 245 or 273.5, subdivision (b) of  
6 Section 273a or, prior to January 1, 1994, paragraph (2) of  
7 Section 273a of the Penal Code, or for any crime for which the  
8 department cannot grant an exemption if the person was  
9 convicted and the person has not been exonerated.

10 (2) The criminal history information shall include the full  
11 criminal record, if any, of those persons, and subsequent arrest  
12 information pursuant to Section 11105.2 of the Penal Code.

13 (3) The following shall apply to the criminal record  
14 information:

15 (A) If the State Department of Social Services finds that the  
16 applicant or any other person specified in subdivision (b) has  
17 been convicted of a crime, other than a minor traffic violation,  
18 the application shall be denied, unless the director grants an  
19 exemption pursuant to subdivision (f).

20 (B) If the State Department of Social Services finds that the  
21 applicant, or any other person specified in subdivision (b) is  
22 awaiting trial for a crime other than a minor traffic violation, the  
23 State Department of Social Services may cease processing the  
24 application until the conclusion of the trial.

25 (C) If no criminal record information has been recorded, the  
26 Department of Justice shall provide the applicant and the State  
27 Department of Social Services with a statement of that fact.

28 (D) If the State Department of Social Services finds after  
29 licensure that the licensee, or any other person specified in  
30 paragraph (2) of subdivision (b), has been convicted of a crime  
31 other than a minor traffic violation, the license may be revoked,  
32 unless the director grants an exemption pursuant to subdivision  
33 (f).

34 (E) An applicant and any other person specified in subdivision  
35 (b) shall submit fingerprint images and related information to the  
36 Department of Justice and the Federal Bureau of Investigation,  
37 through the Department of Justice, for a state and federal level  
38 criminal offender record information search, in addition to the  
39 search required by subdivision (a). If an applicant meets all other  
40 conditions for licensure, except receipt of the Federal Bureau of

1 Investigation's criminal history information for the applicant and  
2 persons listed in subdivision (b), the department may issue a  
3 license if the applicant and each person described by subdivision  
4 (b) has signed and submitted a statement that he or she has never  
5 been convicted of a crime in the United States, other than a  
6 traffic infraction as defined in paragraph (1) of subdivision (a) of  
7 Section 42001 of the Vehicle Code. If, after licensure, the  
8 department determines that the licensee or person specified in  
9 subdivision (b) has a criminal record, the license may be revoked  
10 pursuant to Section 1569.50. The department may also suspend  
11 the license pending an administrative hearing pursuant to  
12 Sections 1569.50 and 1569.51.

13 (b) In addition to the applicant, the provisions of this section  
14 shall apply to criminal convictions of the following persons:

15 (1) (A) Adults responsible for administration or direct  
16 supervision of staff.

17 (B) Any person, other than a client, residing in the facility.  
18 Residents of unlicensed independent senior housing facilities that  
19 are located in contiguous buildings on the same property as a  
20 residential care facility for the elderly shall be exempt from these  
21 requirements.

22 (C) Any person who provides client assistance in dressing,  
23 grooming, bathing, or personal hygiene. Any nurse assistant or  
24 home health aide meeting the requirements of Section 1338.5 or  
25 1736.6, respectively, who is not employed, retained, or  
26 contracted by the licensee, and who has been certified or  
27 recertified on or after July 1, 1998, shall be deemed to meet the  
28 criminal record clearance requirements of this section. A certified  
29 nurse assistant and certified home health aide who will be  
30 providing client assistance and who falls under this exemption  
31 shall provide one copy of his or her current certification, prior to  
32 providing care, to the residential care facility for the elderly. The  
33 facility shall maintain the copy of the certification on file as long  
34 as the care is being provided by the certified nurse assistant or  
35 certified home health aide at the facility. Nothing in this  
36 paragraph restricts the right of the department to exclude a  
37 certified nurse assistant or certified home health aide from a  
38 licensed residential care facility for the elderly pursuant to  
39 Section 1569.58.

1 (D) Any staff person, volunteer, or employee who has contact  
2 with the clients.

3 (E) If the applicant is a firm, partnership, association, or  
4 corporation, the chief executive officer or other person serving in  
5 a similar capacity.

6 (F) Additional officers of the governing body of the applicant  
7 or other persons with a financial interest in the applicant, as  
8 determined necessary by the department by regulation. The  
9 criteria used in the development of these regulations shall be  
10 based on the person's capability to exercise substantial influence  
11 over the operation of the facility.

12 (2) The following persons are exempt from requirements  
13 applicable under paragraph (1):

14 (A) A spouse, relative, significant other, or close friend of a  
15 client shall be exempt if this person is visiting the client or  
16 provides direct care and supervision to that client only.

17 (B) A volunteer to whom all of the following apply:

18 (i) The volunteer is at the facility during normal waking hours.

19 (ii) The volunteer is directly supervised by the licensee or a  
20 facility employee with a criminal record clearance or exemption.

21 (iii) The volunteer spends no more than 16 hours per week at  
22 the facility.

23 (iv) The volunteer does not provide clients with assistance in  
24 dressing, grooming, bathing, or personal hygiene.

25 (v) The volunteer is not left alone with clients in care.

26 (C) A third-party contractor retained by the facility if the  
27 contractor is not left alone with clients in care.

28 (D) A third-party contractor or other business professional  
29 retained by a client and at the facility at the request or by  
30 permission of that client. These individuals may not be left alone  
31 with other clients.

32 (E) Licensed or certified medical professionals are exempt  
33 from fingerprint and criminal background check requirements  
34 imposed by community care licensing. This exemption does not  
35 apply to a person who is a community care facility licensee or an  
36 employee of the facility.

37 (F) Employees of licensed home health agencies and members  
38 of licensed hospice interdisciplinary teams who have contact  
39 with a resident of a residential care facility at the request of the  
40 resident or resident's legal decisionmaker are exempt from



1 fingerprint and criminal background check requirements imposed  
2 by community care licensing. This exemption does not apply to a  
3 person who is a community care facility licensee or an employee  
4 of the facility.

5 (G) Clergy and other spiritual caregivers who are performing  
6 services in common areas of the residential care facility, or who  
7 are advising an individual resident at the request of, or with  
8 permission of, the resident, are exempt from fingerprint and  
9 criminal background check requirements imposed by community  
10 care licensing. This exemption does not apply to a person who is  
11 a community care facility licensee or an employee of the facility.

12 (H) Any person similar to those described in this subdivision,  
13 as defined by the department in regulations.

14 (I) Nothing in this paragraph shall prevent a licensee from  
15 requiring a criminal record clearance of any individual exempt  
16 from the requirements of this section, provided that the  
17 individual has client contact.

18 (c) (1) (A) Subsequent to initial licensure, any person  
19 required to be fingerprinted pursuant to subdivision (b) shall, as a  
20 condition to employment, residence, or presence in a residential  
21 facility for the elderly, be fingerprinted and sign a declaration  
22 under penalty of perjury regarding any prior criminal  
23 convictions. The licensee shall submit these fingerprint images  
24 and related information to the Department of Justice and the  
25 Federal Bureau of Investigation, through the Department of  
26 Justice, for a state and federal level criminal offender record  
27 information search, or to comply with paragraph (1) of  
28 subdivision (g) prior to the person's employment, residence, or  
29 initial presence in the residential care facility for the elderly.

30 (B) These fingerprint images and related information shall be  
31 electronically transmitted in a manner approved by the State  
32 Department of Social Services and the Department of Justice. A  
33 licensee's failure to submit fingerprint images and related  
34 information to the Department of Justice, or to comply with  
35 paragraph (1) of subdivision (g), as required in this section, shall  
36 result in the citation of a deficiency and an immediate assessment  
37 of civil penalties in the amount of one hundred dollars (\$100) per  
38 violation, per day for a maximum of five days, unless the  
39 violation is a second or subsequent violation within a 12-month  
40 period in which case the civil penalties shall be in the amount of

1 one hundred dollars (\$100) per violation for a maximum of 30  
2 days, and shall be grounds for disciplining the licensee pursuant  
3 to Section 1569.50. The State Department of Social Services may  
4 assess civil penalties for continued violations as permitted by  
5 Section 1569.49. The licensee shall then submit these  
6 fingerprints to the State Department of Social Services for  
7 processing. Documentation of the individual's clearance or  
8 exemption shall be maintained by the licensee and be available  
9 for inspection. The Department of Justice shall notify the  
10 department, as required by Section 1522.04, and notify the  
11 licensee by mail within 14 days of electronic transmission of the  
12 fingerprints to the Department of Justice, if the person has no  
13 criminal record. A violation of the regulations adopted pursuant  
14 to Section 1522.04 shall result in the citation of a deficiency and  
15 an immediate assessment of civil penalties in the amount of one  
16 hundred dollars (\$100) per violation, per day for a maximum of  
17 five days, unless the violation is a second or subsequent violation  
18 within a 12-month period in which case the civil penalties shall  
19 be in the amount of one hundred dollars (\$100) per violation for  
20 a maximum of 30 days, and shall be grounds for disciplining the  
21 licensee pursuant to Section 1569.50. The department may assess  
22 civil penalties for continued violations as permitted by Section  
23 1569.49.

24 (2) Within 14 calendar days of the receipt of the fingerprint  
25 images, the Department of Justice shall notify the State  
26 Department of Social Services of the criminal record  
27 information, as provided for in this subdivision. If no criminal  
28 record information has been recorded, the Department of Justice  
29 shall provide the licensee and the State Department of Social  
30 Services with a statement of that fact within 14 calendar days of  
31 receipt of the fingerprint images. If new fingerprint images are  
32 required for processing, the Department of Justice shall, within  
33 14 calendar days from the date of receipt of the fingerprint  
34 images, notify the licensee that the fingerprint images were  
35 illegible.

36 (3) Except for persons specified in paragraph (2) of  
37 subdivision (b), the licensee shall endeavor to ascertain the  
38 previous employment history of persons required to be  
39 fingerprinted under this subdivision. If the State Department of  
40 Social Services determines, on the basis of the fingerprint images

1 submitted to the Department of Justice, that the person has been  
2 convicted of a sex offense against a minor, an offense specified  
3 in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or  
4 a felony, the State Department of Social Services shall notify the  
5 licensee in writing within 15 calendar days of the receipt of the  
6 notification from the Department of Justice to act immediately to  
7 terminate the person's employment, remove the person from the  
8 residential care facility for the elderly, or bar the person from  
9 entering the residential care facility for the elderly. The State  
10 Department of Social Services may subsequently grant an  
11 exemption pursuant to subdivision (f). If the conviction was for  
12 another crime, except a minor traffic violation, the licensee shall,  
13 upon notification by the State Department of Social Services, act  
14 immediately to either (1) terminate the person's employment,  
15 remove the person from the residential care facility for the  
16 elderly, or bar the person from entering the residential care  
17 facility for the elderly or (2) seek an exemption pursuant to  
18 subdivision (f). The department shall determine if the person  
19 shall be allowed to remain in the facility until a decision on the  
20 exemption is rendered by the department. A licensee's failure to  
21 comply with the department's prohibition of employment,  
22 contact with clients, or presence in the facility as required by this  
23 paragraph shall result in a citation of deficiency and an  
24 immediate assessment of civil penalties by the department  
25 against the licensee, in the amount of one hundred dollars (\$100)  
26 per violation, per day for a maximum of five days, unless the  
27 violation is a second or subsequent violation within a 12-month  
28 period in which case the civil penalties shall be in the amount of  
29 one hundred dollars (\$100) per violation for a maximum of 30  
30 days, and shall be grounds for disciplining the licensee pursuant  
31 to Section 1569.50.

32 (4) The department may issue an exemption on its own motion  
33 pursuant to subdivision (f) if the person's criminal history  
34 indicates that the person is of good character based on the age,  
35 seriousness, and frequency of the conviction or convictions. The  
36 department, in consultation with interested parties, shall develop  
37 regulations to establish the criteria to grant an exemption  
38 pursuant to this paragraph.

39 (5) Concurrently with notifying the licensee pursuant to  
40 paragraph (4), the department shall notify the affected individual

1 of his or her right to seek an exemption pursuant to subdivision  
2 (f). The individual may seek an exemption only if the licensee  
3 terminates the person's employment or removes the person from  
4 the facility after receiving notice from the department pursuant to  
5 paragraph (4).

6 (d) (1) For purposes of this section or any other provision of  
7 this chapter, a conviction means a plea or verdict of guilty or a  
8 conviction following a plea of nolo contendere. Any action that  
9 the department is permitted to take following the establishment  
10 of a conviction may be taken when the time for appeal has  
11 elapsed, when the judgment of conviction has been affirmed on  
12 appeal or when an order granting probation is made suspending  
13 the imposition of the sentence, notwithstanding a subsequent  
14 order pursuant to the provisions of Sections 1203.4 and 1203.4a  
15 of the Penal Code permitting a person to withdraw his or her plea  
16 of guilty and to enter a plea of not guilty, or setting aside the  
17 verdict of guilty, or dismissing the accusation, information, or  
18 indictment. For purposes of this section or any other provision of  
19 this chapter, the record of a conviction, or a copy thereof certified  
20 by the clerk of the court or by a judge of the court in which the  
21 conviction occurred, shall be conclusive evidence of the  
22 conviction. For purposes of this section or any other provision of  
23 this chapter, the arrest disposition report certified by the  
24 Department of Justice or documents admissible in a criminal  
25 action pursuant to Section 969b of the Penal Code shall be prima  
26 facie evidence of the conviction, notwithstanding any other  
27 provision of law prohibiting the admission of these documents in  
28 a civil or administrative action.

29 (2) For purposes of this section or any other provision of this  
30 chapter, the department shall consider criminal convictions from  
31 another state or federal court as if the criminal offense was  
32 committed in this state.

33 (e) The State Department of Social Services may not use a  
34 record of arrest to deny, revoke, or terminate any application,  
35 license, employment, or residence unless the department  
36 investigates the incident and secures evidence, whether or not  
37 related to the incident of arrest, that is admissible in an  
38 administrative hearing to establish conduct by the person that  
39 may pose a risk to the health and safety of any person who is or  
40 may become a client. The State Department of Social Services is

1 authorized to obtain any arrest or conviction records or reports  
2 from any law enforcement agency as necessary to the  
3 performance of its duties to inspect, license, and investigate  
4 community care facilities and individuals associated with a  
5 community care facility.

6 (f) (1) After review of the record, the director may grant an  
7 exemption from disqualification for a license as specified in  
8 paragraphs (1) and (4) of subdivision (a), or for employment,  
9 residence, or presence in a residential care facility for the elderly  
10 as specified in paragraphs (4), (5), and (6) of subdivision (c) if  
11 the director has substantial and convincing evidence to support a  
12 reasonable belief that the applicant and the person convicted of  
13 the crime, if other than the applicant, are of such good character  
14 as to justify issuance of the license or special permit or granting  
15 an exemption for purposes of subdivision (c). However, an  
16 exemption may not be granted pursuant to this subdivision if the  
17 conviction was for any of the following offenses:

18 (A) An offense specified in Section 220, 243.4, or 264.1,  
19 subdivision (a) of Section 273a or, prior to January 1, 1994,  
20 paragraph (1) of Section 273a, Section 273d, 288, or 289,  
21 subdivision (a) of Section 290, or Section 368 of the Penal Code,  
22 or was a conviction of another crime against an individual  
23 specified in subdivision (c) of Section 667.5 of the Penal Code.

24 (B) A felony offense specified in Section 729 of the Business  
25 and Professions Code or Section 206 or 215, subdivision (a) of  
26 Section 347, subdivision (b) of Section 417, or subdivision (a) of  
27 Section 451 of the Penal Code.

28 (2) The director shall notify in writing the licensee or the  
29 applicant of his or her decision within 60 days of receipt of all  
30 information from the applicant and other sources determined  
31 necessary by the director for the rendering of a decision pursuant  
32 to this subdivision.

33 (3) The department may not prohibit a person from being  
34 employed or having contact with clients in a facility on the basis  
35 of a denied criminal record exemption request or arrest  
36 information unless the department complies with the  
37 requirements of Section 1569.58.

38 (g) (1) For purposes of compliance with this section, the  
39 department may permit an individual to transfer a current  
40 criminal record clearance, as defined in subdivision (a), from one

1 facility to another, as long as the criminal record clearance has  
2 been processed through a state licensing district office, and is  
3 being transferred to another facility licensed by a state licensing  
4 district office. The request shall be submitted in writing to the  
5 department, and shall include a copy of the person's driver's  
6 license or valid identification card issued by the Department of  
7 Motor Vehicles, or a valid photo identification issued by another  
8 state or the United States government if the person is not a  
9 California resident. Upon request of the licensee, who shall  
10 enclose a self-addressed stamped envelope for this purpose, the  
11 department shall verify whether the individual has a clearance  
12 that can be transferred.

13 (2) The State Department of Social Services shall hold  
14 criminal record clearances in its active files for a minimum of  
15 two years after an employee is no longer employed at a licensed  
16 facility in order for the criminal record clearances to be  
17 transferred under this section.

18 (h) If a licensee or facility is required by law to deny  
19 employment or to terminate employment of any employee based  
20 on written notification from the department that the employee has  
21 a prior criminal conviction or is determined unsuitable for  
22 employment under Section 1569.58, the licensee or facility shall  
23 not incur civil liability or unemployment insurance liability as a  
24 result of that denial or termination.

25 SEC. 11. Section 1569.24 of the Health and Safety Code is  
26 amended to read:

27 1569.24. Within 90 days after a facility accepts its first  
28 resident for placement following its initial licensure, the  
29 department shall inspect the facility to evaluate compliance with  
30 rules and regulations and to assess the facility's continuing  
31 ability to meet regulatory requirements. The licensee shall notify  
32 the department, within five business days after accepting its first  
33 resident for placement, that the facility has commenced  
34 operating.

35 The department may take appropriate remedial action as  
36 provided for in this chapter.

37 SEC. 12. Section 1575.7 of the Health and Safety Code is  
38 amended to read:

39 1575.7. (a) (1) The State Department of Health Services,  
40 prior to issuing a new license, shall obtain a criminal record

1 clearance for the administrator, program director, and fiscal  
2 officer of the proposed adult day health care center. The  
3 department shall obtain the criminal record clearances each time  
4 these positions are to be filled. When the Licensing and  
5 Certification Program receives 95 percent of its total responses  
6 indicating no evidence of recorded criminal information from the  
7 Department of Justice within three business days, it shall issue an  
8 All Facilities Letter (AFL) informing facility licensees. After the  
9 AFL is issued, licensees shall not allow newly hired  
10 administrators, program directors, and fiscal officers to have  
11 direct contact with clients or residents of the facility prior to  
12 completion of the criminal record clearance. A criminal record  
13 clearance shall be complete when the department has obtained  
14 the person's criminal offender record information search  
15 response from the Department of Justice and has determined that  
16 the person is not disqualified from engaging in the activity for  
17 which clearance is required. Notwithstanding any other provision  
18 of law, the department may, without taking regulatory action  
19 pursuant to Chapter 3.5 (commencing with Section 11340) of  
20 Part 1 of Division 3 of Title 2 of the Government Code,  
21 implement, interpret, or make specific this paragraph by means  
22 of an AFL or similar instruction.

23 (2) A criminal record clearance shall be complete when the  
24 department has obtained the person's criminal record information  
25 from the Department of Justice and has determined that the  
26 person is not disqualified from engaging in the activity for which  
27 clearance is required.

28 (3) The criminal record clearance shall require the  
29 administrator, program director, and fiscal officer to submit  
30 electronic fingerprint images to the department. The department  
31 shall explore options to work with private and governmental  
32 agencies to ensure that licensees have adequate access to  
33 electronic transmission sites, including requiring the department  
34 to maintain a contract for electronic transmission services in each  
35 of the district offices where facilities have indicated problems  
36 with timely access to electronic transmission sites or consistent  
37 delays of more than three business days in obtaining  
38 appointments for electronic transmission services through a  
39 private entity, government agency, or law enforcement agency.

(4) An applicant and any other person specified in this subdivision, as part of the background clearance process, shall provide information as to whether or not the person has any prior criminal convictions, has had any arrests within the past 12-month period, or has any active arrests, and shall certify that, to the best of his or her knowledge, the information provided is true. This requirement is not intended to duplicate existing requirements for individuals who are required to submit fingerprint images as part of a criminal background clearance process. Every applicant shall provide information on any prior ~~disciplinary~~ *administrative* action taken against him or her by any federal, state, or local government agency and shall certify that, to the best of his or her knowledge, the information provided is true. An applicant or other person required to provide information pursuant to this section that knowingly or willfully makes false statements, representations, or omissions may be subject to administrative action, including, but not limited to, denial of his or her application or exemption or revocation of any exemption previously granted.

(b) A past conviction of any crime, especially any crime involving misuse of funds or involving physical abuse shall, in the discretion of the department, be grounds for denial of the license, and shall be grounds to prohibit the person from providing services in an adult day health care center.

(c) Suspension of the applicant from the Medi-Cal program or prior violations of statutory provisions or regulations relating to licensure of a health facility, community care facility, or clinic shall also be grounds for a denial of licensure, where determined by the state department to indicate a substantial probability that the applicant will not comply with this chapter and regulations adopted hereunder.

(d) No applicant which is licensed as a health facility, community care facility, or clinic may be issued a license for an adult day health care center while there exists a subsisting, uncorrected violation of the statutes or regulations relating to such licensure.

(e) The department shall develop procedures to ensure that any licensee, direct care staff, or certificate holder for whom a criminal record has been obtained pursuant to this section or



1 Section 1265.5 or 1736 shall not be required to obtain multiple  
2 criminal record clearances.

3 SEC. 13. Section 1596.871 of the Health and Safety Code is  
4 amended to read:

5 1596.871. The Legislature recognizes the need to generate  
6 timely and accurate positive fingerprint identification of  
7 applicants as a condition of issuing licenses, permits, or  
8 certificates of approval for persons to operate or provide direct  
9 care services in a child care center or family child care home. It  
10 is the intent of the Legislature in enacting this section to require  
11 the fingerprints of those individuals whose contact with child day  
12 care facility clients may pose a risk to the children's health and  
13 safety. An individual shall be required to obtain either a criminal  
14 record clearance or a criminal record exemption from the State  
15 Department of Social Services before his or her initial presence  
16 in a child day care facility.

17 (a) (1) Before issuing a license or special permit to any person  
18 to operate or manage a day care facility, the department shall  
19 secure from an appropriate law enforcement agency a criminal  
20 record to determine whether the applicant or any other person  
21 specified in subdivision (b) has ever been convicted of a crime  
22 other than a minor traffic violation or arrested for any crime  
23 specified in Section 290 of the Penal Code, for violating Section  
24 245 or 273.5, subdivision (b) of Section 273a or, prior to January  
25 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for  
26 any crime for which the department cannot grant an exemption if  
27 the person was convicted and the person has not been exonerated.

28 (2) The criminal history information shall include the full  
29 criminal record, if any, of those persons, and subsequent arrest  
30 information pursuant to Section 11105.2 of the Penal Code.

31 (3) Except during the 2003–04, 2004–05, and 2005–06 fiscal  
32 years, neither the Department of Justice nor the department may  
33 charge a fee for the fingerprinting of an applicant who will serve  
34 six or fewer children or any family day care applicant for a  
35 license, or for obtaining a criminal record of an applicant  
36 pursuant to this section.

37 (4) The following shall apply to the criminal record  
38 information:

39 (A) If the State Department of Social Services finds that the  
40 applicant or any other person specified in subdivision (b) has

1 been convicted of a crime, other than a minor traffic violation,  
2 the application shall be denied, unless the director grants an  
3 exemption pursuant to subdivision (f).

4 (B) If the State Department of Social Services finds that the  
5 applicant, or any other person specified in subdivision (b), is  
6 awaiting trial for a crime other than a minor traffic violation, the  
7 State Department of Social Services may cease processing the  
8 application until the conclusion of the trial.

9 (C) If no criminal record information has been recorded, the  
10 Department of Justice shall provide the applicant and the State  
11 Department of Social Services with a statement of that fact.

12 (D) If the State Department of Social Services finds after  
13 licensure that the licensee, or any other person specified in  
14 paragraph (2) of subdivision (b), has been convicted of a crime  
15 other than a minor traffic violation, the license may be revoked,  
16 unless the director grants an exemption pursuant to subdivision  
17 (f).

18 (E) An applicant and any other person specified in subdivision  
19 (b) shall submit fingerprint images and related information to the  
20 Department of Justice and the Federal Bureau of Investigation,  
21 through the Department of Justice, for a state and federal level  
22 criminal offender record information search, in addition to the  
23 search required by subdivision (a). If an applicant meets all other  
24 conditions for licensure, except receipt of the Federal Bureau of  
25 Investigation's criminal history information for the applicant and  
26 persons listed in subdivision (b), the department may issue a  
27 license if the applicant and each person described by subdivision  
28 (b) has signed and submitted a statement that he or she has never  
29 been convicted of a crime in the United States, other than a  
30 traffic infraction as defined in paragraph (1) of subdivision (a) of  
31 Section 42001 of the Vehicle Code. If, after licensure, the  
32 department determines that the licensee or person specified in  
33 subdivision (b) has a criminal record, the license may be revoked  
34 pursuant to Section 1596.885. The department may also suspend  
35 the license pending an administrative hearing pursuant to Section  
36 1596.886.

37 (b) (1) In addition to the applicant, this section shall be  
38 applicable to criminal convictions of the following persons:

39 (A) Adults responsible for administration or direct supervision  
40 of staff.

1 (B) Any person, other than a child, residing in the facility.

2 (C) Any person who provides care and supervision to the  
3 children.

4 (D) Any staff person, volunteer, or employee who has contact  
5 with the children.

6 (i) A volunteer providing time-limited specialized services  
7 shall be exempt from the requirements of this subdivision if this  
8 person is directly supervised by the licensee or a facility  
9 employee with a criminal record clearance or exemption, the  
10 volunteer spends no more than 16 hours per week at the facility,  
11 and the volunteer is not left alone with children in care.

12 (ii) A student enrolled or participating at an accredited  
13 educational institution shall be exempt from the requirements of  
14 this subdivision if the student is directly supervised by the  
15 licensee or a facility employee with a criminal record clearance  
16 or exemption, the facility has an agreement with the educational  
17 institution concerning the placement of the student, the student  
18 spends no more than 16 hours per week at the facility, and the  
19 student is not left alone with children in care.

20 (iii) A volunteer who is a relative, legal guardian, or foster  
21 parent of a client in the facility shall be exempt from the  
22 requirements of this subdivision.

23 (iv) A contracted repair person retained by the facility, if not  
24 left alone with children in care, shall be exempt from the  
25 requirements of this subdivision.

26 (v) Any person similar to those described in this subdivision,  
27 as defined by the department in regulations.

28 (E) If the applicant is a firm, partnership, association, or  
29 corporation, the chief executive officer, other person serving in  
30 like capacity, or a person designated by the chief executive  
31 officer as responsible for the operation of the facility, as  
32 designated by the applicant agency.

33 (F) If the applicant is a local educational agency, the president  
34 of the governing board, the school district superintendent, or a  
35 person designated to administer the operation of the facility, as  
36 designated by the local educational agency.

37 (G) Additional officers of the governing body of the applicant,  
38 or other persons with a financial interest in the applicant, as  
39 determined necessary by the department by regulation. The  
40 criteria used in the development of these regulations shall be

1 based on the person's capability to exercise substantial influence  
2 over the operation of the facility.

3 (H) This section does not apply to employees of child care and  
4 development programs under contract with the State Department  
5 of Education who have completed a criminal record clearance as  
6 part of an application to the Commission on Teacher  
7 Credentialing, and who possess a current credential or permit  
8 issued by the commission, including employees of child care and  
9 development programs that serve both children subsidized under,  
10 and children not subsidized under, a State Department of  
11 Education contract. The Commission on Teacher Credentialing  
12 shall notify the department upon revocation of a current  
13 credential or permit issued to an employee of a child care and  
14 development program under contract with the State Department  
15 of Education.

16 (I) This section does not apply to employees of a child care  
17 and development program operated by a school district, county  
18 office of education, or community college district under contract  
19 with the State Department of Education who have completed a  
20 criminal record clearance as a condition of employment. The  
21 school district, county office of education, or community college  
22 district upon receiving information that the status of an  
23 employee's criminal record clearance has changed shall submit  
24 that information to the department.

25 (2) Nothing in this subdivision shall prevent a licensee from  
26 requiring a criminal record clearance of any individuals exempt  
27 from the requirements under this subdivision.

28 (c) (1) (A) Subsequent to initial licensure, any person  
29 specified in subdivision (b) and not exempted from fingerprinting  
30 shall, as a condition to employment, residence, or presence in a  
31 child day care facility be fingerprinted and sign a declaration  
32 under penalty of perjury regarding any prior criminal conviction.  
33 The licensee shall submit fingerprint images and related  
34 information to the Department of Justice and the Federal Bureau  
35 of Investigation, through the Department of Justice, for a state  
36 and federal level criminal offender record information search, or  
37 to comply with paragraph (1) of subdivision (h), prior to the  
38 person's employment, residence, or initial presence in the child  
39 day care facility.

(B) These fingerprint images for the purpose of obtaining a permanent set of fingerprints shall be electronically submitted to the Department of Justice in a manner approved by the State Department of Social Services and the Department of Justice. A licensee's failure to submit fingerprint images and related information to the Department of Justice, or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a deficiency, and an immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation, per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1596.885 or Section 1596.886. The State Department of Social Services may assess civil penalties for continued violations permitted by Sections 1596.99 and 1597.62. The fingerprint images and related information shall then be submitted to the department for processing. Within 14 calendar days of the receipt of the fingerprint images, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprint images. If new fingerprint images are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprint images, notify the licensee that the fingerprints were illegible.

(C) Documentation of the individual's clearance or exemption shall be maintained by the licensee, and shall be available for inspection. When live-scan technology is operational, as defined in Section 1522.04, the Department of Justice shall notify the department, as required by that section, and notify the licensee by mail within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no criminal record. Any violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one

1 hundred dollars (\$100) per violation, per day for a maximum of  
2 five days, unless the violation is a second or subsequent violation  
3 within a 12-month period in which case the civil penalties shall  
4 be in the amount of one hundred dollars (\$100) per violation for  
5 a maximum of 30 days, and shall be grounds for disciplining the  
6 licensee pursuant to Section 1596.885 or Section 1596.886. The  
7 department may assess civil penalties for continued violations, as  
8 permitted by Sections 1596.99 and 1597.62.

9 (2) Except for persons specified in paragraph (2) of  
10 subdivision (b), the licensee shall endeavor to ascertain the  
11 previous employment history of persons required to be  
12 fingerprinted under this subdivision. If it is determined by the  
13 department, on the basis of fingerprints submitted to the  
14 Department of Justice, that the person has been convicted of a  
15 sex offense against a minor, an offense specified in Section  
16 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony,  
17 the State Department of Social Services shall notify the licensee  
18 to act immediately to terminate the person's employment,  
19 remove the person from the child day care facility, or bar the  
20 person from entering the child day care facility. The department  
21 may subsequently grant an exemption pursuant to subdivision (f).  
22 If the conviction was for another crime except a minor traffic  
23 violation, the licensee shall, upon notification by the State  
24 Department of Social Services, act immediately to either (1)  
25 terminate the person's employment, remove the person from the  
26 child day care facility, or bar the person from entering the child  
27 day care facility; or (2) seek an exemption pursuant to  
28 subdivision (f). The department shall determine if the person  
29 shall be allowed to remain in the facility until a decision on the  
30 exemption is rendered. A licensee's failure to comply with the  
31 department's prohibition of employment, contact with clients, or  
32 presence in the facility as required by this paragraph shall result  
33 in a citation of deficiency and an immediate assessment of civil  
34 penalties by the department against the licensee, in the amount of  
35 one hundred dollars (\$100) per violation, per day for a maximum  
36 of five days, unless the violation is a second or subsequent  
37 violation within a 12-month period in which case the civil  
38 penalties shall be in the amount of one hundred dollars (\$100)  
39 per violation for a maximum of 30 days, and shall be grounds for

1 disciplining the licensee pursuant to Section 1596.885 or  
2 1596.886.

3 (3) The department may issue an exemption on its own motion  
4 pursuant to subdivision (f) if the person's criminal history  
5 indicates that the person is of good character based on the age,  
6 seriousness, and frequency of the conviction or convictions. The  
7 department, in consultation with interested parties, shall develop  
8 regulations to establish the criteria to grant an exemption  
9 pursuant to this paragraph.

10 (4) Concurrently with notifying the licensee pursuant to  
11 paragraph (3), the department shall notify the affected individual  
12 of his or her right to seek an exemption pursuant to subdivision  
13 (f). The individual may seek an exemption only if the licensee  
14 terminates the person's employment or removes the person from  
15 the facility after receiving notice from the department pursuant to  
16 paragraph (3).

17 (d) (1) For purposes of this section or any other provision of  
18 this chapter, a conviction means a plea or verdict of guilty or a  
19 conviction following a plea of nolo contendere. Any action that  
20 the department is permitted to take following the establishment  
21 of a conviction may be taken when the time for appeal has  
22 elapsed, when the judgment of conviction has been affirmed on  
23 appeal, or when an order granting probation is made suspending  
24 the imposition of sentence, notwithstanding a subsequent order  
25 pursuant to Sections 1203.4 and 1203.4a of the Penal Code  
26 permitting the person to withdraw his or her plea of guilty and to  
27 enter a plea of not guilty, or setting aside the verdict of guilty, or  
28 dismissing the accusation, information, or indictment. For  
29 purposes of this section or any other provision of this chapter, the  
30 record of a conviction, or a copy thereof certified by the clerk of  
31 the court or by a judge of the court in which the conviction  
32 occurred, shall be conclusive evidence of the conviction. For  
33 purposes of this section or any other provision of this chapter, the  
34 arrest disposition report certified by the Department of Justice, or  
35 documents admissible in a criminal action pursuant to Section  
36 969b of the Penal Code, shall be prima facie evidence of  
37 conviction, notwithstanding any other provision of law  
38 prohibiting the admission of these documents in a civil or  
39 administrative action.

1 (2) For purposes of this section or any other provision of this  
2 chapter, the department shall consider criminal convictions from  
3 another state or federal court as if the criminal offense was  
4 committed in this state.

5 (e) The State Department of Social Services may not use a  
6 record of arrest to deny, revoke, or terminate any application,  
7 license, employment, or residence unless the department  
8 investigates the incident and secures evidence, whether or not  
9 related to the incident of arrest, that is admissible in an  
10 administrative hearing to establish conduct by the person that  
11 may pose a risk to the health and safety of any person who is or  
12 may become a client. The State Department of Social Services is  
13 authorized to obtain any arrest or conviction records or reports  
14 from any law enforcement agency as necessary to the  
15 performance of its duties to inspect, license, and investigate  
16 community care facilities and individuals associated with a  
17 community care facility.

18 (f) (1) After review of the record, the director may grant an  
19 exemption from disqualification for a license or special permit as  
20 specified in paragraphs (1) and (4) of subdivision (a), or for  
21 employment, residence, or presence in a child day care facility as  
22 specified in paragraphs (3), (4), and (5) of subdivision (c) if the  
23 director has substantial and convincing evidence to support a  
24 reasonable belief that the applicant and the person convicted of  
25 the crime, if other than the applicant, are of good character so as  
26 to justify issuance of the license or special permit or granting an  
27 exemption for purposes of subdivision (c). However, an  
28 exemption may not be granted pursuant to this subdivision if the  
29 conviction was for any of the following offenses:

30 (A) An offense specified in Section 220, 243.4, or 264.1,  
31 subdivision (a) of Section 273a or, prior to January 1, 1994,  
32 paragraph (1) of Section 273a, Section 273d, 288, or 289,  
33 subdivision (a) of Section 290, or Section 368 of the Penal Code,  
34 or was a conviction of another crime against an individual  
35 specified in subdivision (c) of Section 667.5 of the Penal Code.

36 (B) A felony offense specified in Section 729 of the Business  
37 and Professions Code or Section 206 or 215, subdivision (a) of  
38 Section 347, subdivision (b) of Section 417, or subdivision (a) or  
39 (b) of Section 451 of the Penal Code.



1 (2) The department may not prohibit a person from being  
2 employed or having contact with clients in a facility on the basis  
3 of a denied criminal record exemption request or arrest  
4 information unless the department complies with the  
5 requirements of Section 1596.8897.

6 (g) Upon request of the licensee, who shall enclose a  
7 self-addressed stamped postcard for this purpose, the Department  
8 of Justice shall verify receipt of the fingerprint images.

9 (h) (1) For the purposes of compliance with this section, the  
10 department may permit an individual to transfer a current  
11 criminal record clearance, as defined in subdivision (a), from one  
12 facility to another, as long as the criminal record clearance has  
13 been processed through a state licensing district office, and is  
14 being transferred to another facility licensed by a state licensing  
15 district office. The request shall be in writing to the department,  
16 and shall include a copy of the person's driver's license or valid  
17 identification card issued by the Department of Motor Vehicles,  
18 or a valid photo identification issued by another state or the  
19 United States government if the person is not a California  
20 resident. Upon request of the licensee, who shall enclose a  
21 self-addressed stamped envelope for this purpose, the department  
22 shall verify whether the individual has a clearance that can be  
23 transferred.

24 (2) The State Department of Social Services shall hold  
25 criminal record clearances in its active files for a minimum of  
26 two years after an employee is no longer employed at a licensed  
27 facility in order for the criminal record clearances to be  
28 transferred.

29 (3) The following shall apply to a criminal record clearance or  
30 exemption from the department or a county office with  
31 department delegated licensing authority:

32 (A) A county office with department delegated licensing  
33 authority may accept a clearance or exemption from the  
34 department.

35 (B) The department may accept a clearance or exemption from  
36 any county office with department delegated licensing authority.

37 (C) A county office with department delegated licensing  
38 authority may accept a clearance or exemption from any other  
39 county office with department delegated licensing authority.

(4) With respect to notifications issued by the Department of Justice pursuant to Section 11105.2 of the Penal Code concerning an individual whose criminal record clearance was originally processed by the department or a county office with department delegated licensing authority, all of the following shall apply:

(A) The Department of Justice shall process a request from the department or a county office with department delegated licensing authority to receive the notice, only if all of the following conditions are met:

(i) The request shall be submitted to the Department of Justice by the agency to be substituted to receive the notification.

(ii) The request shall be for the same applicant type as the type for which the original clearance was obtained.

(iii) The request shall contain all prescribed data elements and format protocols pursuant to a written agreement between the department and the Department of Justice.

(B) (i) On or before January 7, 2005, the department shall notify the Department of Justice of all county offices that have department delegated licensing authority.

(ii) The department shall notify the Department of Justice within 15 calendar days of the date on which a new county office receives department delegated licensing authority or a county's delegated licensing authority is rescinded.

(C) The Department of Justice shall charge the department or a county office with department delegated licensing authority a fee for each time a request to substitute the recipient agency is received for purposes of this paragraph. This fee shall not exceed the cost of providing the service.

SEC. 14. Section 1728.1 of the Health and Safety Code is amended to read:

1728.1. (a) To qualify for a home health agency license, the following requirements shall be met:

(1) Every applicant shall satisfy the following conditions:

(A) Be of good moral character. If the applicant is a firm, association, organization, partnership, business trust, corporation, or company, all principal managing members thereof, and the person in charge of the agency for which application for license is made, shall satisfy this requirement. If the applicant is a political subdivision of the state or other governmental agency,

1 the person in charge of the agency for which application for  
2 license is made, shall satisfy this requirement.

3 (B) Possess and demonstrate the ability to comply with this  
4 chapter and the rules and regulations adopted under this chapter  
5 by the state department.

6 (C) File his or her application pursuant to and in full  
7 compliance with this chapter.

8 (2) (A) The following persons shall submit to the State  
9 Department of Health Services an application and shall submit  
10 electronic fingerprint images to the Department of Justice for the  
11 furnishing of the person's criminal record to the state department,  
12 at the person's expense as provided in subdivision (b), for the  
13 purpose of a criminal record review:

14 (i) The owner or owners of a private agency if the owners are  
15 individuals.

16 (ii) If the owner of a private agency is a corporation,  
17 partnership, or association, any person having a 10 percent or  
18 greater interest in that corporation, partnership, or association.

19 (iii) The administrator of a home health agency.

20 (B) When the Licensing and Certification Program receives 95  
21 percent of its total responses indicating no evidence of recorded  
22 criminal information from the Department of Justice within three  
23 business days, it shall issue an All Facilities Letter (AFL)  
24 informing facility licensees. After the AFL is issued, licensees  
25 must not allow newly hired administrators, program directors,  
26 and fiscal officers to have direct contact with clients or residents  
27 of the facility prior to completion of the criminal record  
28 clearance. A criminal record clearance shall be complete when  
29 the department has obtained the person's criminal offender  
30 record information search response from the Department of  
31 Justice and has determined that the person is not disqualified  
32 from engaging in the activity for which clearance is required.  
33 Notwithstanding any other provision of law, the department may,  
34 without taking regulatory action pursuant to Chapter 3.5  
35 (commencing with Section 11340) of Part 1 of Division 3 of Title  
36 2 of the Government Code, implement, interpret, or make  
37 specific this paragraph by means of an AFL or similar  
38 instruction.

39 (b) The persons specified in paragraph (2) of subdivision (a)  
40 shall be responsible for any costs associated with transmitting the

1 electronic fingerprint images. The fee to cover the processing  
2 costs of the Department of Justice, not including the costs  
3 associated with capturing or transmitting the fingerprint images  
4 and related information, shall not exceed thirty-two dollars (\$32)  
5 per submission. The department shall explore options to work  
6 with private and governmental agencies to ensure that licensees  
7 have adequate access to electronic transmission sites, including  
8 requiring the department to maintain a contract for electronic  
9 transmission services in each of the district offices where  
10 facilities have indicated problems with timely access to  
11 electronic transmission sites or consistent delays of more than  
12 three business days in obtaining appointments for electronic  
13 transmission services through a private entity, government  
14 agency, or law enforcement agency.

15 (c) If the criminal record review conducted pursuant to  
16 paragraph (2) of subdivision (a) discloses a conviction for a  
17 felony or any crime that evidences an unfitness to provide home  
18 health services, the application for a license shall be denied or the  
19 person shall be prohibited from providing service in the home  
20 health agency applying for a license. This subdivision shall not  
21 apply to deny a license or prohibit the provision of service if the  
22 person presents evidence satisfactory to the state department that  
23 the person has been rehabilitated and presently is of such good  
24 character as to justify the issuance of the license or the provision  
25 of service in the home health agency.

26 (d) An applicant and any other person specified in this section,  
27 as part of the background clearance process, shall provide  
28 information as to whether or not the person has any prior  
29 criminal convictions, has had any arrests within the past  
30 12-month period, or has any active arrests, and shall certify that,  
31 to the best of his or her knowledge, the information provided is  
32 true. This requirement is not intended to duplicate existing  
33 requirements for individuals who are required to submit  
34 fingerprint images as part of a criminal background clearance  
35 process. Every applicant shall provide information on any prior  
36 ~~disciplinary~~ *administrative* action taken against him or her by any  
37 federal, state, or local government agency and shall certify that,  
38 to the best of his or her knowledge, the information provided is  
39 true. An applicant or other person required to provide  
40 information pursuant to this section that knowingly or willfully

1 makes false statements, representations, or omissions may be  
2 subject to administrative action, including, but not limited to,  
3 denial of his or her application or exemption or revocation of any  
4 exemption previously granted.

5 SEC. 15. Section 1736.6 of the Health and Safety Code is  
6 amended to read:

7 1736.6. ~~(a) A~~ *The Legislature hereby finds and declares that*  
8 *90 percent of all criminal record reports processed by*  
9 *Department of Justice's Licensing and Certification Program are*  
10 *now cleared within three business days after they are received by*  
11 *the department, while the remaining 10 percent require*  
12 *individual processing, investigation, and determination.*

13 (a) (1) A criminal record clearance shall be conducted by the  
14 department for all home health aides by electronically submitting  
15 fingerprint images and related information to the Department of  
16 Justice. ~~When the Licensing and Certification Program receives~~  
17 ~~95 percent of its total responses indicating no evidence of~~  
18 ~~recorded criminal information from the Department of Justice~~  
19 ~~within three business days, it shall issue an All Facilities Letter~~  
20 ~~(AFL) informing facility licensees. After the AFL is issued,~~  
21 ~~licensees must not~~ *The Licensing and Certification Program*  
22 *shall issue an All Facilities Letter (AFL) to facility licensees*  
23 *when both of the following criteria are met:*

24 (A) *The program receives, within three business days, 95*  
25 *percent of its total responses indicating no evidence of recorded*  
26 *criminal information from the Department of Justice.*

27 (B) *The program processes 95 percent of its total responses*  
28 *requiring disqualification in accordance with paragraph (2) of*  
29 *subdivision (c) of Section 1736.5, no later than 45 days after the*  
30 *date that the report is received from the Department of Justice.*

31 (2) *After the AFL is issued, licensees must not* allow newly  
32 hired administrators, program directors, and fiscal officers to  
33 have direct contact with clients or residents of the facility prior to  
34 completion of the criminal record clearance. A criminal record  
35 clearance shall be complete when the department has obtained  
36 the person's criminal offender record information search  
37 response from the Department of Justice and has determined that  
38 the person is not disqualified from engaging in the activity for  
39 which clearance is required. Notwithstanding any other provision  
40 of law, the department may, without taking regulatory action

1 pursuant to Chapter 3.5 (commencing with Section 11340) of  
2 Part 1 of Division 3 of Title 2 of the Government Code,  
3 implement, interpret, or make specific this subdivision by means  
4 of an AFL or similar instruction. Applicants shall be responsible  
5 for any costs associated with capturing or transmitting the  
6 fingerprint images and related information. The fee to cover the  
7 processing costs of the Department of Justice, not including the  
8 costs associated with capturing or transmitting the fingerprint  
9 images and related information, shall not exceed thirty-two  
10 dollars (\$32) per submission. The department shall explore  
11 options to work with private and governmental agencies to  
12 ensure that licensees have adequate access to electronic  
13 transmission sites, including requiring the department to maintain  
14 a contract for electronic transmission services in each of the  
15 district offices where facilities have indicated problems with  
16 timely access to electronic transmission sites or consistent delays  
17 of more than three business days in obtaining appointments for  
18 electronic transmission services through a private entity,  
19 government agency, or law enforcement agency.

20 (b) Upon enrollment in a training program for home health  
21 aide certification, and prior to direct contact with residents, a  
22 candidate for training shall submit a training and examination  
23 application to the department and submit electronic fingerprint  
24 images and related information to receive a criminal record  
25 review through the Department of Justice. This criminal record  
26 clearance shall be completed prior to direct contact with  
27 residents. Submission of the fingerprint images to the Federal  
28 Bureau of Investigation, through the Department of Justice, shall  
29 be at the discretion of the state department.

30 (c) New home health aide applicants who are unemployed and  
31 unable to pay the fee charged by the Department of Justice  
32 pursuant to paragraph (1) of subdivision (a) due to financial  
33 hardship may request a waiver for a period not to exceed six  
34 months. The request for waiver shall be made in writing at the  
35 time the fingerprint images and related information are submitted  
36 for processing. The applicant shall agree to pay the fee within six  
37 months of employment. The failure to pay the fee within the  
38 six-month period shall result in the inactivation of the applicant's  
39 certificate until the fee is paid in full.

1 (d) Upon receipt of the fingerprints, the Department of Justice  
2 shall notify the state department of the criminal record  
3 information, as provided for in this subdivision. If no criminal  
4 record information has been recorded, the Department of Justice  
5 shall provide the state department with a statement of that fact. If  
6 the fingerprint images are illegible, the Department of Justice  
7 shall, within 15 calendar days from receipt of the fingerprint  
8 images, notify the state department of that fact.

9 (e) The department shall respond to the applicant and  
10 employer within 30 days from the date of receipt of the  
11 fingerprint images and related information.

12 (f) A criminal record clearance, consistent with this section  
13 shall be implemented for home health aide applicants beginning  
14 July 1, 1998, and phased in for all certified home health aides by  
15 June 30, 2000.

16 (g) The department shall develop procedures to ensure that  
17 any licensee, direct care staff, or certificate holder for whom a  
18 criminal record has been obtained pursuant to this section or  
19 Section 1265.6 or 1338.5 shall not be required to obtain multiple  
20 criminal record clearances.

21 (h) An applicant and any other person specified in this  
22 subdivision, as part of the background clearance process, shall  
23 provide information as to whether or not the person has any prior  
24 criminal convictions, has had any arrests within the past  
25 12-month period, or has any active arrests, and shall certify that,  
26 to the best of his or her knowledge, the information provided is  
27 true. This requirement is not intended to duplicate existing  
28 requirements for individuals who are required to submit  
29 fingerprint images as part of a criminal background clearance  
30 process. Every applicant shall provide information on any prior  
31 ~~disciplinary~~ *administrative* action taken against him or her by any  
32 federal, state, or local government agency and shall certify that,  
33 to the best of his or her knowledge, the information provided is  
34 true. An applicant or other person required to provide  
35 information pursuant to this section that knowingly or willfully  
36 makes false statements, representations, or omissions may be  
37 subject to administrative action, including, but not limited to,  
38 denial of his or her application or exemption or revocation of any  
39 exemption previously granted.

1     *(i) If, at any time, the department does not meet the standards*  
2     *specified in subparagraphs (A) and (B) of paragraph (1) of*  
3     *subdivision (a) for a period of 90 days, the requirements in*  
4     *subdivision (a) shall be suspended until the department can*  
5     *demonstrate that it has met those standards for a period of 90*  
6     *days.*

7     SEC. 16. Section 1743.9 of the Health and Safety Code is  
8     amended to read:

9     1743.9. (a) To qualify for a private duty nursing agency  
10    license, the following requirements shall be met:

11    (1) Every applicant shall satisfy the following conditions:

12    (A) Be of good moral character. If the applicant is a firm,  
13    association, organization, partnership, business trust, corporation,  
14    or company, all principal managing members thereof, and the  
15    person in charge of the agency for which application for a license  
16    is made, shall satisfy this requirement. If the applicant is a  
17    political subdivision of the state or other governmental agency,  
18    the person in charge of the agency for which application for a  
19    license is made shall satisfy this requirement.

20    (B) Possess and demonstrate the ability to comply with this  
21    chapter and the rules and regulations adopted under this chapter  
22    by the department.

23    (C) File his or her application pursuant to and in full  
24    compliance with this chapter.

25    (2) (A) The following persons shall submit to the department  
26    an application, and shall submit fingerprint images and related  
27    information to the Department of Justice, for the furnishing of the  
28    person's criminal record to the department, at the person's  
29    expense as provided in subdivision (b), for the purpose of a  
30    criminal record review:

31    (i) The owner or owners of a private agency if the owners are  
32    individuals.

33    (ii) If the owner of a private agency is a corporation,  
34    partnership, or association, any person having a 10 percent or  
35    greater interest in that corporation, partnership, or association.

36    (iii) The administrator of a private duty nursing agency.

37    (3) A criminal record clearance shall be complete when the  
38    department has obtained from the Department of Justice the  
39    person's criminal record and has determined that the person is



1 not disqualified from engaging in the activity for which clearance  
2 is required.

3 (4) An applicant and any other person specified in this  
4 subdivision, as part of the background clearance process, shall  
5 provide information as to whether or not the person has any prior  
6 criminal convictions, has had any arrests within the past  
7 12-month period, or has any active arrests, and shall certify that,  
8 to the best of his or her knowledge, the information provided is  
9 true. This requirement is not intended to duplicate existing  
10 requirements for individuals who are required to submit  
11 fingerprint images as part of a criminal background clearance  
12 process. Every applicant shall provide information on any prior  
13 ~~disciplinary~~ *administrative* action taken against him or her by any  
14 federal, state, or local government agency and shall certify that,  
15 to the best of his or her knowledge, the information provided is  
16 true. An applicant or other person required to provide  
17 information pursuant to this section that knowingly or willfully  
18 makes false statements, representations, or omissions may be  
19 subject to administrative action, including, but not limited to,  
20 denial of his or her application or exemption or revocation of any  
21 exemption previously granted.

22 (b) The persons specified in paragraph (2) of subdivision (a)  
23 shall be responsible for any costs associated with capturing or  
24 transmitting the fingerprint images and related information. The  
25 fee to cover the processing costs of the Department of Justice,  
26 not including the costs associated with capturing or transmitting  
27 the electronic fingerprint images and related information, shall  
28 not exceed thirty-two dollars (\$32) per submission. The  
29 department shall explore options to work with private and  
30 governmental agencies to ensure that licensees have adequate  
31 access to electronic transmission sites, including requiring the  
32 department to maintain a contract for electronic transmission  
33 services in each of the district offices where facilities have  
34 indicated problems with timely access to electronic transmission  
35 sites or consistent delays of more than three business days in  
36 obtaining appointments for electronic transmission services  
37 through a private entity, government agency, or law enforcement  
38 agency.

39 (c) If the criminal record review conducted pursuant to  
40 paragraph (2) of subdivision (a) discloses a conviction for a

1 felony or any crime that evidences an unfitness to provide private  
2 duty nursing services, the application for a license shall be  
3 denied, or the person shall be prohibited from providing service  
4 in the private duty nursing agency applying for a license. This  
5 subdivision shall not apply to deny a license or prohibit the  
6 provision of service if the person presents evidence satisfactory  
7 to the department that the person has been rehabilitated and  
8 presently is of that good character that justifies the issuance of  
9 the license or the provision of service in the private duty nursing  
10 agency.

11 ~~SEC. 18.~~ Section 1798.212 is added to the Health and Safety  
12 Code, to read:

13 ~~1798.212.~~ (a) Each applicant for an initial EMT-P license or  
14 for renewal of an EMT-P license shall disclose, on forms adopted  
15 by the authority, the following information:

16 (1) ~~The conviction of any crime under any state, federal, or~~  
17 ~~military jurisdiction, or any other jurisdiction outside of the~~  
18 ~~United States. All convictions shall be reported, including~~  
19 ~~convictions that have been expunged, convictions for which a~~  
20 ~~certificate of rehabilitation has been issued, and convictions for~~  
21 ~~which there has been a plea of nolo contendere.~~

22 (2) ~~Any pending criminal charges or a current criminal~~  
23 ~~investigation.~~

24 (3) ~~Any denial, revocation, suspension, or placement on~~  
25 ~~probation of a professional healing arts license, certification,~~  
26 ~~accreditation, or similar entitlement.~~

27 (4) ~~Any pending investigation for patient care related issues.~~

28 (b) ~~Any disclosure required by subdivision (a) shall include a~~  
29 ~~detailed written statement describing the crime or patient care~~  
30 ~~issue and the disposition. The applicant shall provide any police~~  
31 ~~reports, court records, or other documents under the applicant's~~  
32 ~~possession or control.~~

33 ~~SEC. 19.~~

34 ~~SEC. 18.~~ Section 106700 of the Health and Safety Code is  
35 amended to read:

36 106700. (a) A nonreturnable fee, shall be paid by a person  
37 for each application for registration, application for examination,  
38 and biennial renewal.

39 (b) Fees shall not exceed the actual administrative costs of the  
40 program. Fees, except retired and penalty fees, shall be subject to

1 Section 100425. The actual dollar figure charged shall be  
2 rounded to the nearest whole dollar amount. The biennial  
3 renewal fee-retired shall be twenty-five dollars (\$25).

4 (c) The nonreturnable biennial renewal fee, shall be paid by  
5 each registered environmental health specialist on or before the  
6 first day of January of every second year, or on any other date  
7 that is determined by the department. Each registered  
8 environmental health specialist registered pursuant to this article,  
9 shall first pay the biennial fee at the time of initial registration to  
10 cover the calendar year in which registration is acquired and the  
11 following calendar year. Registrations not maintained as required  
12 by this subdivision are suspended and remain invalid during the  
13 period of suspension. Suspended registrations become revoked  
14 three years after the date of suspension. Notwithstanding the  
15 provisions of the Government Code, the executive officer shall  
16 revoke suspended registrations after three years from the date of  
17 suspension for nonpayment of fees.

18 (d) An additional penalty fee equal to 50 percent of the  
19 biennial renewal fee for each year of delinquency or portion  
20 thereof shall be paid by each person who fails to pay the fee  
21 required by subdivision (c) within 30 days of the established due  
22 date. All accumulated penalty fees shall be paid prior to any  
23 revalidation of registration.

24 (e) The department shall receive and account for all money  
25 received pursuant to this article and shall deposit it with the  
26 Treasurer who shall keep the money in a separate fund to be  
27 known as the “Registered Environmental Health Specialist  
28 Fund,” that fund is hereby created.

29 (f) Notwithstanding Section 13340 of the Government Code,  
30 funds collected pursuant to the provisions of this article are  
31 continuously appropriated without regard to fiscal year to pay  
32 expenses of the department to administer the provisions of this  
33 article.

34 (g) The following fees are hereby established and shall be  
35 annually adjusted as required by subdivision (b):

36 (1) Application fee—ninety-five dollars (\$95).

37 (2) Examination fee—one hundred and twenty-six dollars  
38 (\$126).

39 (3) Biennial renewal fee—active—one hundred and  
40 seventy-five dollars (\$175).

1     ~~SEC. 20.~~

2     *SEC. 19.* Section 106722 is added to the Health and Safety  
3 Code, to read:

4     106722. The department may deny, amend, revoke, suspend,  
5 or restrict a registration issued pursuant to this article when, in  
6 the judgment of the department, a person's background or  
7 behavior bears materially on that person's ability to safely  
8 perform activities under the registration.

9     ~~SEC. 21.~~

10    *SEC. 20.* Section 106877 is added to the Health and Safety  
11 Code, to read:

12    106877. The department may deny, amend, revoke, suspend,  
13 or restrict a certification issued under this article when, in the  
14 judgment of the department, a person's background or behavior  
15 bears materially on that person's ability to safely perform  
16 activities under the certification. The department may conduct  
17 informal proceedings pursuant to this section. The results of the  
18 informal proceedings may be appealed to an administrative law  
19 judge. Unless appealed within 30 days, the findings of the  
20 department in the informal proceedings shall be final.

21    ~~SEC. 22.~~

22    *SEC. 21.* Section 116735 of the Health and Safety Code is  
23 amended to read:

24    116735. (a) In order to carry out the purposes of this  
25 chapter, any duly authorized representative of the department  
26 may, at any reasonable hour of the day, do any of the following:

27    (1) Enter and inspect any public water system or any place  
28 where the public water system records are stored, kept, or  
29 maintained.

30    (2) Inspect and copy any records, reports, test results, or other  
31 information required to carry out this chapter.

32    (3) Set up and maintain monitoring equipment for purposes of  
33 assessing compliance with this chapter.

34    (4) Obtain samples of the water supply.

35    (5) Photograph any portion of the system, any activity, or any  
36 sample taken.

37    (b) The department shall inspect each public water system as  
38 follows:

39    (1) A system with any surface water source with treatment  
40 shall be inspected annually.

1 (2) A system with any groundwater source subject to treatment  
2 with only groundwater sources shall be inspected biennially.

3 (3) A system with only groundwater sources not subject to  
4 treatment shall be inspected every three years.

5 (c) Nothing in this section shall prohibit the department from  
6 inspecting public water systems on a more frequent basis. An  
7 opportunity shall be provided for a representative of the public  
8 water system to accompany the representative of the department  
9 during the inspection of the water system.

10 (d) It shall be a misdemeanor for any person to prevent,  
11 interfere with, or attempt to impede in any way any duly  
12 authorized representative of the department from undertaking the  
13 activities authorized by subdivision (a).

14 ~~SEC. 23.~~

15 *SEC. 22.* Section 5405 of the Welfare and Institutions Code  
16 is amended to read:

17 5405. (a) This section shall apply to each facility licensed by  
18 the State Department of Mental Health, or its delegated agent, on  
19 or after January 1, 2003. For purposes of this section, “facility”  
20 includes psychiatric health facilities, as defined in Section 1250.2  
21 of the Health and Safety Code, licensed pursuant to Chapter 9  
22 (commencing with Section 77001) of Division 5 of Title 22 of  
23 the California Code of Regulations and mental health  
24 rehabilitation centers licensed pursuant to Chapter 3.5  
25 (commencing with Section 781.00) of Division 1 of Title 9 of the  
26 California Code of Regulations.

27 (b) (1) (A) Prior to the initial licensure or first renewal of a  
28 license on or after January 1, 2003, of any person to operate or  
29 manage a facility specified in subdivision (a), the department  
30 shall submit fingerprint images and related information  
31 pertaining to the applicant or licensee to the Department of  
32 Justice for purposes of a criminal record check, as specified in  
33 paragraph (2), at the expense of the applicant or licensee. The  
34 Department of Justice shall provide the results of the criminal  
35 record check to the department. The department may take into  
36 consideration information obtained from or provided by other  
37 government agencies. The department shall determine whether  
38 the applicant or licensee has ever been convicted of a crime  
39 specified in subdivision (c). The department shall submit  
40 fingerprint images and related information each time the position

1 of administrator, manager, program director, or fiscal officer of a  
2 facility is filled and prior to actual employment for initial  
3 licensure or an individual who is initially hired on or after  
4 January 1, 2003. For purposes of this subdivision, “applicant”  
5 and “licensee” include the administrator, manager, program  
6 director, or fiscal officer of a facility.

7 (B) Commencing January 1, 2003, upon the employment of, or  
8 contract with or for, any direct care staff the department shall  
9 submit fingerprint images and related information pertaining to  
10 the direct care staff person to the Department of Justice for  
11 purposes of a criminal record check, as specified in paragraph  
12 (2), at the expense of the direct care staff person or licensee. The  
13 Department of Justice shall provide the results of the criminal  
14 record check to the department. The department shall determine  
15 whether the direct care staff person has ever been convicted of a  
16 crime specified in subdivision (c). The department shall notify  
17 the licensee of these results. No direct client contact by the  
18 trainee or newly hired staff, or by any direct care contractor shall  
19 occur prior to clearance by the department unless the trainee,  
20 newly hired employee, contractor, or employee of the contractor  
21 is constantly supervised.

22 (C) Commencing January 1, 2003, any contract for services  
23 provided directly to patients or residents shall contain provisions  
24 to ensure that the direct services contractor submits to the  
25 department fingerprint images and related information pertaining  
26 to the direct services contractor for submission to the Department  
27 of Justice for purposes of a criminal record check, as specified in  
28 paragraph (2), at the expense of the direct services contractor or  
29 licensee. The Department of Justice shall provide the results of  
30 the criminal record check to the department. The department  
31 shall determine whether the direct services contractor has ever  
32 been convicted of a crime specified in subdivision (c). The  
33 department shall notify the licensee of these results.

34 (2) If the applicant, licensee, direct care staff person, or direct  
35 services contractor specified in paragraph (1) has resided in  
36 California for at least the previous seven years, the department  
37 shall only require the submission of one set of fingerprint images  
38 and related information. The Department of Justice shall charge a  
39 fee sufficient to cover the reasonable cost of processing the  
40 fingerprint submission. Fingerprints and related information

1 submitted pursuant to this subdivision include fingerprint images  
2 captured and transmitted electronically. When requested, the  
3 Department of Justice shall forward one set of fingerprint images  
4 to the Federal Bureau of Investigation for the purpose of  
5 obtaining any record of previous convictions or arrests pending  
6 adjudication of the applicant, licensee, direct care staff person, or  
7 direct services contractor. The results of a criminal record check  
8 provided by the Department of Justice shall contain every  
9 conviction rendered against an applicant, licensee, direct care  
10 staff person, or direct services contractor, and every offense for  
11 which the applicant, licensee, direct care staff person, or direct  
12 services contractor is presently awaiting trial, whether the person  
13 is incarcerated or has been released on bail or on his or her own  
14 recognizance pending trial. The department shall request  
15 subsequent arrest notification from the Department of Justice  
16 pursuant to Section 11105.2 of the Penal Code.

17 (3) An applicant and any other person specified in this  
18 subdivision, as part of the background clearance process, shall  
19 provide information as to whether or not the person has any prior  
20 criminal convictions, has had any arrests within the past  
21 12-month period, or has any active arrests, and shall certify that,  
22 to the best of his or her knowledge, the information provided is  
23 true. This requirement is not intended to duplicate existing  
24 requirements for individuals who are required to submit  
25 fingerprint images as part of a criminal background clearance  
26 process. Every applicant shall provide information on any prior  
27 ~~disciplinary~~ *administrative* action taken against him or her by any  
28 federal, state, or local government agency and shall certify that,  
29 to the best of his or her knowledge, the information provided is  
30 true. An applicant or other person required to provide  
31 information pursuant to this section that knowingly or willfully  
32 makes false statements, representations, or omissions may be  
33 subject to administrative action, including, but not limited to,  
34 denial of his or her application or exemption or revocation of any  
35 exemption previously granted.

36 (c) (1) The department shall deny any application for any  
37 license, suspend or revoke any existing license, and disapprove  
38 or revoke any employment or contract for direct services, if the  
39 applicant, licensee, employee, or direct services contractor has  
40 been convicted of, or incarcerated for, a felony defined in

1 subdivision (c) of Section 667.5 of, or subdivision (c) of Section  
2 1192.7 of, the Penal Code, within the preceding 10 years.

3 (2) The application for licensure or renewal of any license  
4 shall be denied, and any employment or contract to provide direct  
5 services shall be disapproved or revoked, if the criminal record of  
6 the person includes a conviction in another jurisdiction for an  
7 offense that, if committed or attempted in this state, would have  
8 been punishable as one or more of the offenses referred to in  
9 paragraph (1).

10 (d) (1) The department may approve an application for, or  
11 renewal of, a license, or continue any employment or contract for  
12 direct services, if the person has been convicted of a  
13 misdemeanor offense that is not a crime upon the person of  
14 another, the nature of which has no bearing upon the duties for  
15 which the person will perform as a licensee, direct care staff  
16 person, or direct services contractor. In determining whether to  
17 approve the application, employment, or contract for direct  
18 services, the department shall take into consideration the factors  
19 enumerated in paragraph (2).

20 (2) Notwithstanding subdivision (c), if the criminal record of a  
21 person indicates any conviction other than a minor traffic  
22 violation, the department may deny the application for license or  
23 renewal, and may disapprove or revoke any employment or  
24 contract for direct services. In determining whether or not to  
25 deny the application for licensure or renewal, or to disapprove or  
26 revoke any employment or contract for direct services, the  
27 department shall take into consideration the following factors:

28 (A) The nature and seriousness of the offense under  
29 consideration and its relationship to the person's employment,  
30 duties, and responsibilities.

31 (B) Activities since conviction, including employment or  
32 participation in therapy or education, that would indicate changed  
33 behavior.

34 (C) The time that has elapsed since the commission of the  
35 conduct or offense and the number of offenses.

36 (D) The extent to which the person has complied with any  
37 terms of parole, probation, restitution, or any other sanction  
38 lawfully imposed against the person.

39 (E) Any rehabilitation evidence, including character  
40 references, submitted by the person.



1 (F) Employment history and current employer  
2 recommendations.

3 (G) Circumstances surrounding the commission of the offense  
4 that would demonstrate the unlikelihood of repetition.

5 (H) The granting by the Governor of a full and unconditional  
6 pardon.

7 (I) A certificate of rehabilitation from a superior court.

8 (e) Denial, suspension, or revocation of a license, or  
9 disapproval or revocation of any employment or contract for  
10 direct services specified in subdivision (c) and paragraph (2) of  
11 subdivision (d) are not subject to appeal, except as provided in  
12 subdivision (f).

13 (f) After a review of the record, the director may grant an  
14 exemption from denial, suspension, or revocation of any license,  
15 or disapproval of any employment or contract for direct services,  
16 if the crime for which the person was convicted was a property  
17 crime that did not involve injury to any person and the director  
18 has substantial and convincing evidence to support a reasonable  
19 belief that the person is of such good character as to justify  
20 issuance or renewal of the license or approval of the employment  
21 or contract.

22 (g) A plea or verdict of guilty, or a conviction following a plea  
23 of nolo contendere shall be deemed a conviction within the  
24 meaning of this section. The department may deny any  
25 application, or deny, suspend, or revoke a license, or disapprove  
26 or revoke any employment or contract for direct services based  
27 on a conviction specified in subdivision (c) when the judgment of  
28 conviction is entered or when an order granting probation is  
29 made suspending the imposition of sentence.

30 (h) (1) For purposes of this section, “direct care staff” means  
31 any person who is an employee, contractor, or volunteer who has  
32 contact with other patients or residents in the provision of  
33 services. Administrative and licensed personnel shall be  
34 considered direct care staff when directly providing program  
35 services to participants.

36 (2) An additional background check shall not be required  
37 pursuant to this section if the direct care staff or licensee has  
38 received a prior criminal history background check while  
39 working in a mental health rehabilitation center or psychiatric  
40 health facility licensed by the department, and provided the

1 department has maintained continuous subsequent arrest  
2 notification on the individual from the Department of Justice  
3 since the prior criminal background check was initiated.

4 (3) When an application is denied on the basis of a conviction  
5 pursuant to this section, the department shall provide the  
6 individual whose application was denied with notice, in writing,  
7 of the specific grounds for the proposed denial.

8 ~~(4) State departments and agencies may share information~~  
9 ~~regarding final administrative actions taken by individual~~  
10 ~~departments.~~

11 ~~(5) State departments and agencies may take action with~~  
12 ~~respect to applicants and licensees based on information obtained~~  
13 ~~from other state departments and agencies if the information~~  
14 ~~indicates that the conduct of the applicant or licensee has been~~  
15 ~~inimical to the clients or the public.~~

16 ~~SEC. 24.~~

17 *SEC. 23.* Section 9719 of the Welfare and Institutions Code  
18 is amended to read:

19 9719. (a) The office shall sponsor a meeting of  
20 representatives of approved organizations at least twice each  
21 year. The office shall provide training to these representatives as  
22 appropriate. Prior to acceptance by the office as designated  
23 ombudsmen, individuals shall receive a minimum of 36 hours of  
24 training.

25 (b) Beginning July 1, 2007, the State Department of Social  
26 Services shall conduct a criminal offender record information  
27 search, pursuant to Section 1569.17 of the Health and Safety  
28 Code, and shall notify the office of the individual's suitability  
29 status. The State Department of Social Services' criminal record  
30 clearance shall be completed prior to the designation as an  
31 ombudsman, and shall be considered complete when the office  
32 obtains the person's criminal record clearance from the State  
33 Department of Social Services, or when the department has  
34 determined that the person is not disqualified from engaging in  
35 the activity for which the clearance is required. The office shall  
36 contract with the department to conduct the criminal background  
37 check process for prospective ombudsmen. Applicants for  
38 designation as an ombudsman shall not be responsible for any  
39 cost associated with transmitting the fingerprint images and  
40 related information or conducting criminal record clearances.

1 Upon acceptance, designated ombudsmen shall receive a card  
2 issued by the California Department of Aging identifying the  
3 bearer as an official ombudsman. Each ombudsman shall receive  
4 a minimum of 12 hours of additional training annually. Nothing  
5 in this subdivision shall be construed to prohibit the Department  
6 of Justice from assessing a fee pursuant to Section 11105 of the  
7 Penal Code to cover the cost of searching for or furnishing  
8 summary criminal offender record information.

9 ~~SEC. 25.~~

10 *SEC. 24.* No reimbursement is required by this act pursuant  
11 to Section 6 of Article XIII B of the California Constitution  
12 because the only costs that may be incurred by a local agency or  
13 school district will be incurred because this act creates a new  
14 crime or infraction, eliminates a crime or infraction, or changes  
15 the penalty for a crime or infraction, within the meaning of  
16 Section 17556 of the Government Code, or changes the  
17 definition of a crime within the meaning of Section 6 of Article  
18 XIII B of the California Constitution.